

federal register

TUESDAY, NOVEMBER 9, 1976



highlights

PART I:

PRESCRIPTIONS

Justice/DEA proposes filling for certain controlled substances; comments by 12-10-76..... 49505

ANTIBIOTICS

HEW/FDA provides for certification of amikacin sulfate injection; effective 11-9-76..... 49482

NEW DRUGS

HEW/FDA offers opportunity for hearing on less-than effective indication for propylthiouracil for oral use; requests by 12-9-76..... 49535

NEW ANIMAL DRUGS

HEW/FDA approves safe use of lasalocid sodium with roxarsone in manufacture of feed for broiler or fryer chickens; effective 11-9-76..... 49484

FOOD ADDITIVES

HEW/FDA provides for safe use of sanitizing solution; effective 11-19-76; comments by 12-9-76..... 49482

BABY FOODS

HEW/FDA extends comment periods to 1-7-77 for proposals on establishment of a common or usual name and on requirement of percentage declaration of ingredients (2 documents)..... 49504

GRAIN

USDA/CCC amends general price support regulations; effective 11-9-76..... 49476

PETROLEUM ALLOCATION

FEA amends regulations to exempt Bunker fuels sales from export sales deduction of domestic program; effective 11-1-76..... 49476

ENERGY

FEA publishes lists of cases filed with Office of Exceptions and Appeals (2 documents)..... 49518, 49520

VETERANS EDUCATION

VA proposes clarification of regulations on training by open circuit television; comments by 12-9-76..... 49506

MEDICARE

HEW/SSA proposes rules for determination of reasonable charges under End-Stage Renal Disease Program; comments by 2-7-77..... 49499

CONTINUED INSIDE

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing **202-523-5240**.

FEDERAL REGISTER, Daily Issue:

Subscriptions and distribution.....	202-783-3238
"Dial - a - Regulation" (recorded summary of highlighted documents appearing in next day's issue).	202-523-5022
Scheduling of documents for publication.	523-5220
Copies of documents appearing in this issue.	523-5215
Corrections	523-5286
Public Inspection Desk	523-5215
Finding Aids	523-5227
Public Briefings: "How To Use the Federal Register."	523-5282
Code of Federal Regulations (CFR) ..	523-5266
Finding Aids	523-5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523-5233
Weekly Compilation of Presidential Documents.	523-5235
Public Papers of the Presidents....	523-5235
Index	523-5235

PUBLIC LAWS:

Public Law dates and numbers.....	523-5237
Slip Laws.....	523-5237
U.S. Statutes at Large	523-5237
Index	523-5237

U.S. Government Manual.....	523-5230
Automation	523-5240
Special Projects.....	523-5240

HIGHLIGHTS—Continued

HEALTH MANPOWER

HEW/PHS announces acceptance of applications for grants to assist health professions schools..... **49536**

MANAGEMENT BACKGROUND

SEC proposes amendment of registration and reporting forms; comments by 12-15-76..... **49493**

DEPOSIT INSURANCE COVERAGE

FDIC proposes rules on accounts held by investment companies; comments by 1-14-77..... **49492**

MEETINGS—

Commerce: Technical Advisory Board, 11-30 and 12-1-76	49512
DIBA: National Industrial Energy Council, 12-8-76	49511
National Industrial Energy Council, Program Development Sub-Council, 12-3-76	49512
DOD/AF: USAF Scientific Advisory Board, 12-3-76	49513
HEW: President's Committee on Mental Retardation, 12-9 and 12-10-76	49537
OE: National Advisory Council on Extension and Continuing Education, 11-23-76	49536
Interior: National Petroleum Council, 12-1 and 12-2-76	49555
BLM: Wyoming State Multiple Use Advisory Board, 12-20-76	49538
State: International Telegraph and Telephone Consultative Committee, 11-30-76	49559
EPA: Chlorofluorocarbon Working Group, 12-3-76	49514
State-Federal FIFRA Implementation Advisory Committee's Working Group on Enforcement, 12-1 and 12-2-76	49517
NASA: NASA Research and Technology Advisory Council Panel on Research, 11-30 and 12-1-76	49556

Physical Sciences Committee of the Space Program Advisory Council, 12-2 and 12-3-76	49556
Space Science Steering Committee, Jupiter Orbiter Probe 1981 Ad Hoc Advisory Subcommittee, 12-15 thru 12-17-76	49557
National Transportation Policy Study Commission, 11-19 and 11-20-76	49558
NSF: Advisory Panel for Earth Sciences, 12-1 and 12-2-76	49557
Ethics and Values in Science and Technology, 12-3 and 12-5-76	49557

PART II:

HEALTH MAINTENANCE ORGANIZATIONS

HEW/SSA issues regulations on principles of reimbursement for cost-basis and risk-basis; effective 12-9-76..... **49591**

PART III:

UNEMPLOYMENT

Labor/ETA proposes regulations on disaster assistance; comments by 12-9-76..... **49607**

PART IV:

ELECTIONS

FEC updates Index of Multicandidate Committees and issues advisory opinion requests (2 documents)..... **49617**

PART V:

PRIVACY ACT

National Advisory Council on Economic Opportunity issues notice of systems of records and proposes regulations for implementation; comments by 12-31-76..... **49621**

contents

AGRICULTURAL MARKETING SERVICE

Rules	
Barley; grain standards; correction	49473
Filberts grown in Oreg. and Wash.	49475
Oranges, grapefruit, tangerines, and tangelos grown in Fla.	49474
Proposed Rules	
Dates (domestic) produced in Calif.	49492

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

Proposed Rules	
Peanuts, marketing quotas and acreage allotments	49492

AGRICULTURE DEPARTMENT

See also Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Commodity Credit Corporation; Forest Service.

Rules	
Authority delegations by Secretary and General Officers: Under Secretary, et al.	49473

AIR FORCE DEPARTMENT

Notices	
Meetings:	
Scientific Advisory Board	49513

CENSUS BUREAU

Notices	
Surveys, determinations, etc.: Manufacturing area, annual surveys	49510

CIVIL AERONAUTICS BOARD

Rules	
Mail transportation; review of Postmaster General's orders	49477
Notices	
Hearings, etc.:	
Braniff Airways, Inc.	49508
Globus-Gateway Tours, Ltd.	49509
Louisville Service Case	49509
North Atlantic fares investigation	49509
Substitution of other services for air transportation on U.S. sectors of international freight routings	49509

CIVIL SERVICE COMMISSION

Rules	
Excepted service:	
Treasury Department	49473
Political activity of Federal employees; "partisan candidate"	49473
Single gender language, avoidance of; nomenclature changes; correction	49473
Notices	
Noncareer executive assignments: Health, Education, and Welfare Department	49510

COMMERCE DEPARTMENT

See also Census Bureau; Domestic and International Business Administration; Maritime Administration; National Oceanic and Atmospheric Administration.

Notices	
Meetings:	
Technical Advisory Board	49512

COMMODITY CREDIT CORPORATION

Rules	
Loan and purchase programs:	
Grain	49476

COMMUNITY SERVICES ADMINISTRATION

Notices	
Emergency energy conservation program; submission of funding plans	49513

CUSTOMS SERVICE

Notices	
Reimbursable services; excess cost of preclearance operations	49560

DEFENSE DEPARTMENT

See Air Force Department.

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Notices	
Meetings:	
National Industrial Energy Council (2 documents)	49511, 49512

DRUG ENFORCEMENT ADMINISTRATION

Proposed Rules	
Prescriptions:	
Controlled substances, partial filing for long term patients; emergency kits computerized refill information	49505

ECONOMIC OPPORTUNITY, NATIONAL ADVISORY COUNCIL

Proposed Rules	
Privacy Act; implementation	49491
Notices	
Privacy Act; systems of records	49621

EDUCATION OFFICE

Notices	
Meetings:	
Extension and Continuing Education National Advisory Council	49536

EMPLOYMENT AND TRAINING ADMINISTRATION

Proposed Rules	
Disaster unemployment assistance	49607

ENVIRONMENTAL PROTECTION AGENCY

Notices	
Food additive petitions:	
Amchem Products, Inc. et al.	49513
Meetings:	
Chlorofluorocarbon Working Group	49514
State-Federal FIFRA Implementation Advisory Committee; Working Group on Enforcement	49517
Pesticide applicator certification; State plans:	
Arkansas	49513
New Mexico	49514
Texas	49517
Pesticide registration:	
Applications (2 documents)	49514, 49516

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Rules	
Deposit insurance coverage, clarification and definition; insurance of trust funds	49492

FEDERAL ELECTION COMMISSION

Notices	
Advisory opinion requests	49619
Multicandidate political committees; index update	49619

FEDERAL ENERGY ADMINISTRATION

Rules	
Petroleum allocation regulations, mandatory:	
Crude oil, domestic; adjustments	49476

Notices	
Appeals and applications for exception, etc.; cases filed with Exceptions and Appeals Office: List of applicants (2 documents)	49518, 49520

FEDERAL HIGHWAY ADMINISTRATION

Rules	
Payment procedures:	
Public employees on Federal-aid projects, employment; reimbursement	49484

FEDERAL HOUSING COMMISSIONER—OFFICE OF ASSISTANT SECRETARY FOR HOUSING

Notices	
Section 8 housing assistance payments and demonstration rehabilitation programs; allocation availability	49537

FEDERAL MARITIME COMMISSION

Notices	
Agreements filed, etc.:	
Prudential Lines, etc.	49521
Seatrains International, S.A.	49521
Trans Mar Corp.	49522

CONTENTS

FEDERAL POWER COMMISSION

Notices

Hearings, etc.:

Area Rate Proceeding, et al.	49527
Arkansas Louisiana Gas Co. (2 documents)	49523, 49524
Baltimore Gas & Electric Co.	49527
Columbia Gas Transmission Co.	49524
Delmarva Power & Light Co.	49528
El Paso Eastern Co.	49529
Georgia Power Co.	49524
Hargrove, Joseph L., et al.	49529
Idaho Power Co.	49530
Illinois Power Co. (4 documents)	49524, 49525
Indiana & Michigan Electric Co.	49530
Interstate Power Co.	49530
Kansas Power & Light Co.	49530
Minnesota Power & Light Co.	49525
Mississippi Power & Light Co.	49530
Mitchell Energy Corp.	49531
Montana-Dakota Utilities Co.	49525
National Fuel Gas Supply Corp.	49526
Natural Gas Pipeline Co. of America	49531
Nevada Power Co.	49532
Northwest Pipeline Corp.	49532
Ohio Electric Co.	49527
Otter Tail Power Co.	49527
Panhandle Eastern Pipeline Co. (2 documents)	49532, 49533
Petersburg, City of, Alaska	49524
Philadelphia Electric Co.	49533
Southern Natural Gas	49533
Southwest Gas Corp.	49533
Tennessee Gas Pipeline Co.	49533
Union Electric Co.	49527
United Gas Pipe Line Co. (2 documents)	49527, 49534

FEDERAL TRADE COMMISSION

Rules

Prohibited trade practices:

Relco, Inc., et al.	49480
---------------------	-------

FISH AND WILDLIFE SERVICE

Rules

Fishing:

Missisquoi National Wildlife Refuge, Vt.	49488
Public access, use, and recreation: Carleton Pond Waterfowl Production Area, Maine	49487
Iroquois National Wildlife Refuge, N.Y.	49487
Moosehorn National Wildlife Refuge, Maine	49488
Salt Plains National Wildlife Refuge, Okla.	49488

Notices

Endangered species permits; applications (3 documents)	49539-49541
Marine mammal applications, etc.:	
University of Minnesota	49542

FOOD AND DRUG ADMINISTRATION

Rules

Animal drugs, feeds, and related products:

Lasalocid sodium with roxarsone	49484
Food additives:	
Sanitizing solutions	49482

Human drugs:

Amikacin sulfate injection	49482
Digoxin products; labeling; correction; republication	49482

Proposed Rules

Food labeling:

Infant foods; percentage declaration of ingredients; extension of time	49504
--	-------

Human drugs:

Tetracycline antibiotic; updating and technical revisions; correction	49504
---	-------

Infant and junior foods; common or usual name; extension of time

	49504
--	-------

Notices

Committees; establishment, renewals, etc.:

Medical Device Classification Panels	49534
--------------------------------------	-------

Human drugs:

Propylthiouracil for oral use	49535
-------------------------------	-------

FOREST SERVICE

Notices

Environmental statements; availability, etc.:

Helena National Forest, Colorado-Unionville-Travis Planning Unit, Mont.	49508
---	-------

Meetings:

Gila National Forest Grazing Advisory Board	49508
---	-------

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Education Office; Food and Drug Administration; Health Resources Administration; Rehabilitation Services Administration; Social Security Administration.

Notices

Meetings:

Mental Retardation, President's Committee	49537
---	-------

HEALTH RESOURCES ADMINISTRATION

Notices

Health professions schools in financial distress, applications for grants	49536
---	-------

HEARINGS AND APPEALS OFFICE, INTERIOR DEPARTMENT

Notices

Applications, etc.:

B&J Coal Co.	49543
Beechtree Coal Co., Inc.	49543
Camp Coal Co.	49544
Camp Fork Fuel Co.	49544
Claymon & Abram Adkins Coal Co.	49545
Eastern Associated Coal Corp.	49545
Franklin Police Coal Co.	49546
Kermit Coal Co.	49546
Mt. Run Coal Co.	49547

Olga Coal Co. (2 documents)	49547, 49548
Page Fork Coal Co., Inc. (2 documents)	49548, 49549
Peabody Coal Co.	49549
Sugarloaf Mining Co.	49550
Valley Coal Co. (2 documents)	49551
Westmoreland Coal Co.	49552
Winjay Coal Co.	49553
Youngstown Mines Corp.	49553
Zeigler Coal Co.	49554

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See also Federal Housing Commissioner Office of Assistant Secretary for Housing.

Rules

Low-income housing:

Housing assistance payments program; Section 8 substantial rehabilitation projects	49484
--	-------

Notices

Authority delegations:

New Community Development Corporation, Acting Deputy General Manager, and New Communities Administration, Acting Administrator	49537
--	-------

INTERIOR DEPARTMENT

See also Fish and Wildlife Service; Hearings and Appeals Office; Land Management Bureau; Mining Enforcement and Safety Administration; National Park Service.

Notices

Financial interest statements: Bleiweis, Julius	49554
---	-------

Meetings:

Enhanced Recovery Techniques for Oil and Gas in U.S. Committee	49555
--	-------

INTERNATIONAL TRADE COMMISSION

Notices

Import investigations: Mushrooms	49555
----------------------------------	-------

INTERSTATE COMMERCE COMMISSION

Notices

Fourth section applications for relief	49560
Hearing assignments	49560
Motor carriers: Transfer proceedings	49560

JUSTICE DEPARTMENT

See Drug Enforcement Administration.

LABOR DEPARTMENT

See Employment and Training Administration; Occupational Safety and Health Administration.

CONTENTS

LAND MANAGEMENT BUREAU

Rules	
Alaska native selections; procedures	49487
Notices	
Airport leases:	
California	49538
Applications, etc.:	
New Mexico	49538
Meetings:	
Wyoming State Multiple Use Advisory Board	49538

MARITIME ADMINISTRATION

Notices	
Diesel engines, slow speed; ship propulsion; domestic manufacture	49512

MINING ENFORCEMENT AND SAFETY ADMINISTRATION

Proposed Rules	
Respiratory protective devices; permissibility tests:	
Gas and vapor respirators, single-use; correction	49506

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notices	
Meetings:	
NASA Research and Technology Advisory Council	49556
Physical Sciences Committee, Space Program Advisory Council	49556
Space Science Steering Committee, Jupiter Orbiter Probe 1981	49557

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Rules	
Marine mammals:	
Pribilof Islands, administration	49488
Proposed Rules	
Marine mammals:	
Incidental taking; commercial fishing operations for yellow-fin tuna; hearing; name removed from communications list	49507

NATIONAL PARK SERVICE

Notices	
Historic Places National Register; additions	49542

NATIONAL SCIENCE FOUNDATION

Notices	
Meetings:	
Earth Sciences Advisory Panel	49557
Ethics and Values in Science and Technology	49557
Federal Scientific and Technical Information Managers'	49557

NATIONAL TRANSPORTATION POLICY STUDY COMMISSION

Notices	
Meeting	49558

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Notices	
State plans; development, enforcement, etc.:	
Virgin Islands	49555

REHABILITATION SERVICES ADMINISTRATION

Notices	
Vocational rehabilitation services; allotment percentages; correction	49537

SECURITIES AND EXCHANGE COMMISSION

Proposed Rules	
Management background disclosure, reporting requirements; Securities Act and Securities Exchange Act	49493

Notices	
Hearings, etc.:	
Municipal Securities Rulemaking Board	49558

SMALL BUSINESS ADMINISTRATION

Notices	
Applications, etc.:	
Bryan Capital, Inc.	49559
First United Small Business Investment Co., Inc.	49559
Irving Small Business Investment Co., Inc.	49559

SOCIAL SECURITY ADMINISTRATION

Rules	
Aged and disabled, health insurance for:	
Health maintenance organizations; cost-basis and risk-basis; reimbursement	49591
Proposed Rules	
Aged and disabled, health insurance for:	
Renal disease program, end-stage	49499

STATE DEPARTMENT

Notices	
Meetings:	
International Telegraph and Telephone Consultative Committee	49559

TRANSPORTATION DEPARTMENT

<i>See also Federal Highway Administration.</i>	
Rules	
Organization and functions:	
Assistant Secretary for Administration	49487

TREASURY DEPARTMENT

See Customs Service.

VETERANS ADMINISTRATION

Proposed Rules	
Vocational rehabilitation and education:	
Television, open circuit training; acceptable number of credit hours of training	49506

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Weekly Briefings at the Office of the Federal Register

(For Details, See 41 FR 46527, Oct. 21, 1976)

RESERVATIONS: JANET SOREY, 523-5282

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.
A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

1 CFR		17 CFR		23 CFR	
PROPOSED RULES:		PROPOSED RULES:		140	49484
405	49491	230	49493	24 CFR	
5 CFR		239	49493	881	49484
Ch. I	49473	240	49493	30 CFR	
213	49473	249	49493	PROPOSED RULES:	
733	49473	20 CFR		11	49506
7 CFR		405 (2 documents)	49499, 49592	38 CFR	
2	49473	PROPOSED RULES:		PROPOSED RULES:	
26	49473	405	49499	21	49506
905	49474	625	49608	43 CFR	
982	49475	21 CFR		2650	49487
1421	49476	121	49482	49 CFR	
PROPOSED RULES:		310	49482	1	49487
729	49492	430	49482	50 CFR	
987	49492	436	49483	26 (4 documents)	49487, 49488
10 CFR		444	49483	33	49488
211	49476	558	49484	215	49488
12 CFR		PROPOSED RULES:		PROPOSED RULES:	
PROPOSED RULES:		102	49504	216	49507
330	49492	125	49504		
331	49492	436	49504		
14 CFR		446	49504		
232	49477	1306	49505		
16 CFR					
13	49480				

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during November.

viii FEDERAL REGISTER, VOL. 41, NO. 217—TUESDAY, NOVEMBER 9, 1976

FEDERAL REGISTER

21 CFR—Continued

PROPOSED RULES:	
102	49504
121	48125
125	49504
436	49504
446	49504
452	48125
1306	49505

22 CFR

201	48732
211	47919

23 CFR

140	48516, 49484
740	48682

24 CFR

570	48476
881	49484
888	49440
1917	48110-48132,
	48337-48341, 48535-48538, 48732-
	48735, 49093, 49094
2205	48538

PROPOSED RULES:

1917	48366-
	48370, 48542-48552, 49151-49159

25 CFR

60	48735
104	48735

26 CFR

601	48740
-----	-------

PROPOSED RULES:

1	48132-48134, 49160
48	48346
301	49178
601	48746

27 CFR

5	48120
---	-------

29 CFR

1910	48742
2608	48480
2610	48484

PROPOSED RULES:

60	48947
1910	48746, 48950
1915	48950
1916	48950
1917	48950
1918	48950
1926	48950
2608	48492
2610	48498
2615	48504

30 CFR

PROPOSED RULES:	
11	49506

31 CFR

PROPOSED RULES:	
350	47959

33 CFR

117	48516
PROPOSED RULES:	
40	47944
117	47945
204	48747

36 CFR

221	48538
-----	-------

38 CFR

PROPOSED RULES:	
3	48747
21	49506

40 CFR

60	48342
61	48342
120	48737
407	48736
416	48516
455	48088

PROPOSED RULES:

52	47949-47956, 48044, 48750, 48752
60	48706

41 CFR

8-7	48516
8-18	48516
101-11	48737
101-32	48519

PROPOSED RULES:

60-2	48128
60-5	48128
60-8	48128

42 CFR

PROPOSED RULES:	
54	48242
84	48753

43 CFR

2650	49487
3300	48738

PROPOSED RULES:

3500	48124, 48754
3510	48124
9230	48754

45 CFR

250	48738
581	49094
801	47938, 48739
1005	48739

PROPOSED RULES:

177	48862, 48910
1061	49179

47 CFR

0	48343, 49095
15	49095
21	47931
73	47931, 49095-49103
74	48519
89	48520
91	48520
93	48520

PROPOSED RULES:

21	49182
73	47956, 49182

49 CFR

1	48122, 49487
218	48343
501	47933
1033	48122, 48343, 48344
1090	48344
1121	48520
1201	48972

PROPOSED RULES:

173	48553
210	49183
571	48555
218	48126
265	48371
393	47948
1090	48130
1100	49282

50 CFR

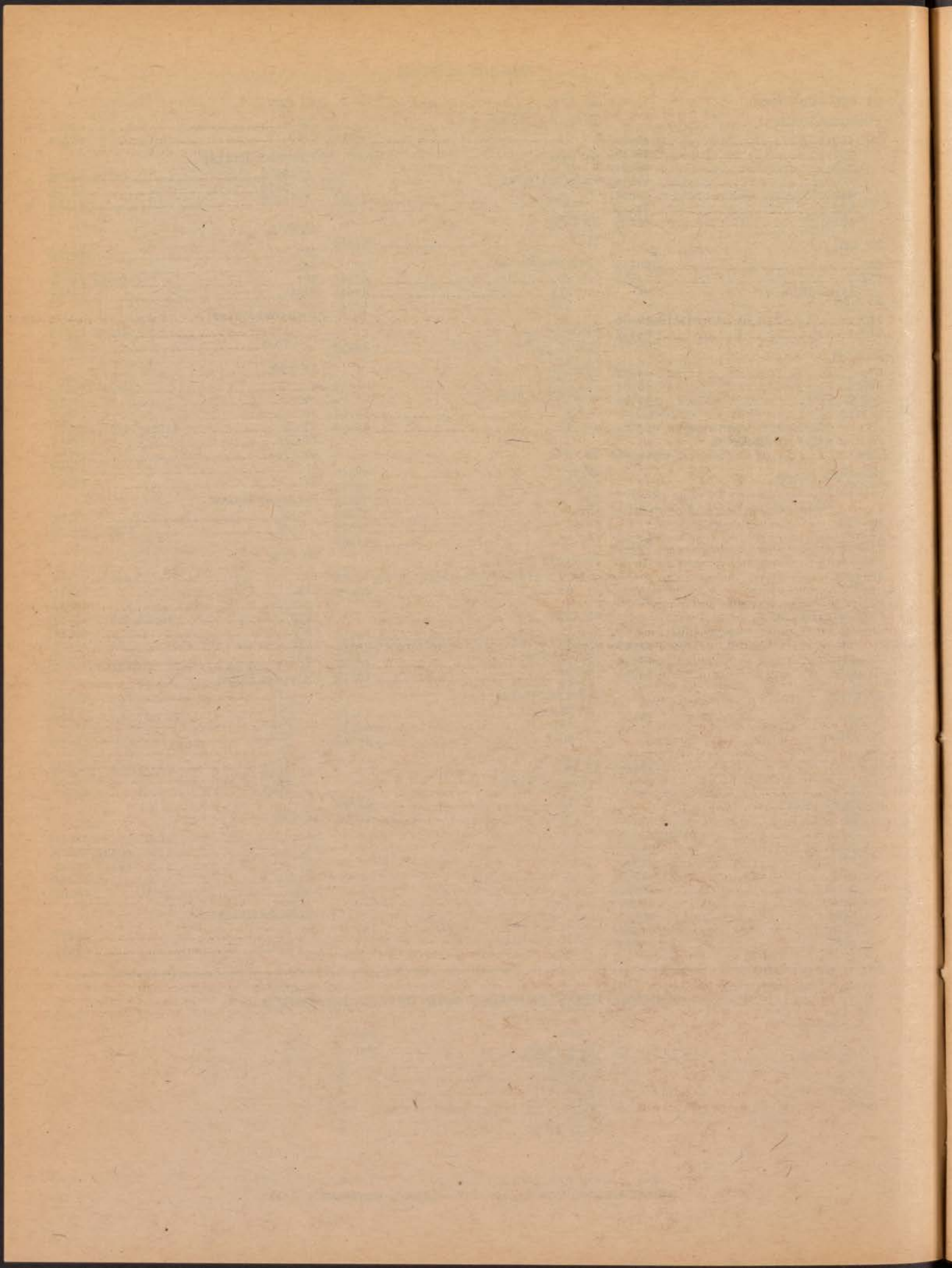
20	48534
26	49487, 49488
32	48345, 48535
33	49488
215	49488

PROPOSED RULES:

17	48757
216	49507

FEDERAL REGISTER PAGES AND DATES—NOVEMBER

Pages	Date
47909-48096	Nov. 1
48097-48315	2
48317-48508	3
48509-48718	4
48719-49081	5
49083-49472	8
49473-49623	9



rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 5—Administrative Personnel CHAPTER I—CIVIL SERVICE COMMISSION AVOIDANCE OF SINGLE GENDER LANGUAGE

Nomenclature Change; Correction

In the document appearing in the FEDERAL REGISTER of September 24, 1976, Doc. 76-27993, appearing on page 41907, the words "of Federal Regulations" were inadvertently omitted in the second sentence. The second sentence should read as follows: "To comply with this recommendation, Chapter I of Title 5 of the Code of Federal Regulations is amended by changing the masculine pronouns 'he, his, or him' to 'he or she', 'his or her', or 'him or her'."

UNITED STATES CIVIL SERVICE
COMMISSION,

JAMES C. SPRY,
Executive Assistant
to the Commissioners.

[FR Doc. 76-32772 Filed 11-8-76; 8:45 am]

PART 213—EXCEPTED SERVICE

Department of the Treasury

Section 213.3305 is amended to show that one position of Special Assistant to the Assistant Secretary (Enforcement, Operations, and Tariff Affairs) is re-established under Schedule C.

Effective November 9, 1976, § 213.3305 (a) (61) is amended as set out below:

§ 213.3305 Department of the Treasury.

(a) Office of the Secretary. * * *

(61) One Special Assistant to the Assistant Secretary (Enforcement, Operations, and Tariff Affairs).

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE
COMMISSION,

JAMES C. SPRY,
Executive Assistant
to the Commissioners.

[FR Doc. 76-32990 Filed 11-8-76; 8:45 am]

PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

Candidate in a Partisan Election; Nomenclature Change

The Civil Service Commission is amending § 733.122 to change the term "partisan candidate" to "candidate in a partisan election" to more properly reflect a long-standing Commission policy.

Section 733.122(b) (4) through (10) is amended as set out below:

§ 733.122 Political management and political campaigning; prohibitions.

(b) Activities prohibited by paragraph (a) of this section include but are not limited to—

(4) Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election or of a political party, or political club;

(5) Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;

(6) Becoming a candidate for, or campaigning for, an elective public office in a partisan election;

(7) Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office;

(8) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;

(9) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;

(10) Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign, literature, or similar material;

(5 U.S.C. 1308, 3301, 3302, 7301, 7324, 7325, 7327; 42 U.S.C. 2729; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE
COMMISSION,

JAMES C. SPRY,
Executive Assistant
to the Commissioners.

[FR Doc. 76-32773 Filed 11-8-76; 8:45 am]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Delegation of Authority Regarding Remote Sensing Activities

Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended to delegate

to the Director of Agricultural Economics the authority to develop policy and coordinate all remote sensing activities in USDA and represent the Department with outside organizations and agencies regarding remote sensing matters.

Section 2.27 is amended by adding a new paragraph (g) to read as follows:

§ 2.27 Delegations of authority to the Director of Agricultural Economics.

(g) Related to remote sensing. Develop policy and coordinate all remote sensing activities in the Department and represent the Department with outside organizations and agencies regarding remote sensing matters.

Effective date: November 9, 1976.

Date: November 4, 1976.

JOHN A. KNEBEL,
Acting Secretary of Agriculture.

[FR Doc. 76-32940 Filed 11-8-76; 8:45 am]

CHAPTER I—AGRICULTURAL MARKET- ING SERVICE (STANDARDS, INSPEC- TIONS, MARKETING PRACTICES), DE- PARTMENT OF AGRICULTURE

PART 26—GRAIN STANDARDS

United States Standards for Barley; Corrections

In FR Doc. 75-20584 beginning on page 33427 in the issue of Friday, August 8, 1975, the following change should be made:

On page 33429, § 26.205(b) is corrected to read as follows:

§ 26.205 Percentages.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth of a percent, except for dockage, the identity of barley, classes, ergot, and for plump barley. The percentage of dockage, when equal to one percent or more, shall be stated as a whole percent; a fraction of a percent shall be disregarded. The percentage, when determining the identity of barley and the classes in the class "Barley," shall be stated to the nearest whole percent. The percentage of ergot shall be stated to the nearest hundredth percent. The percentage of plump barley shall be determined * * *

Done at Washington, D.C., on November 4, 1976.

DONALD E. WILKERSON,
Administrator.

[FR Doc. 76-32878 Filed 11-8-76; 8:45 am]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Orange Reg. 75, Amdt. 1; Grapefruit Reg. 77, Amdt. 1; Tangelo Reg. 48, Amdt. 1]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Grade and Size Requirements

Amendment 1 of Orange Regulation 75 (§ 905.564), of Grapefruit Regulation 77

(§ 905.565), and of Tangelo Regulation 48 (§ 905.567) is each issued pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905). Said regulations became effective September 27, 1976, and these amendments extend the regulations through September 25, 1977. Unless extended, the regulations would expire on November 15, 1976. The regulations specify grade and size requirements applicable to domestic and export shipments of Florida oranges, grapefruit, and tangelos as set forth in the following table:

TABLE

Variety	Domestic regulations		Export regulations	
	Minimum grade	Minimum diameter in inches (count size in % bu carton)	Minimum grade	Minimum diameter in inches (count size in % bu carton)
Early-midseason Oranges	U.S. No. 1	2½ (size 125)	U.S. No. 1	2½ (size 163)
Navel oranges	U.S. No. 1 golden	2½ (size 125)	U.S. No. 1 golden	2½ (size 163)
Temple oranges	U.S. No. 1	2½ (size 125)	U.S. No. 1	2½ (size 163)
Murcott Honey Oranges	Florida No. 1	2½ (size 120)	Florida No. 1	2½ (size 150)
Valencia oranges	U.S. No. 1	2½ (size 125)	U.S. No. 1	2½ (size 163)
Seeded grapefruit	do.	3½ (size 40)	do.	3½ (size 48)
Seedless grapefruit	Improved No. 2	3½ (size 48)	Improved No. 2	3½ (size 64)
Tangelos	U.S. No. 1	2½ (size 125)	U.S. No. 1	2½ (size 163)

The extension of the effective period of such regulations is necessary to promote orderly marketing and provide consumers with an ample supply of acceptable-quality fruit.

Notice was published in the FEDERAL REGISTER on October 13, 1976 (41 FR 44865), that consideration was being given to amendment of the regulations applicable to shipments of Florida oranges, grapefruit, and tangelos handled between the production area and any point outside thereof. The notice provided that all written data, views, or arguments in connection with the proposed amendments be submitted by October 28, 1976. None were received.

The regulations were recommended by the Growers Administrative Committee, established under the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The amendments reflect the Department's appraisal of the need for regulation of shipments of the specified varieties of oranges, grapefruit, and tangelos during the period November 15, 1976, through September 25, 1977, based on the available supply and current and prospective market conditions. The amendments are necessary to ensure the continued shipment of fruit of appropriate grades and sizes in the interest of both growers and consumers. The action is necessary to maintain orderly marketing conditions by preventing the adverse effect on the market caused by shipment of lower quality and smaller size fruit when more than ample supplies of the more desirable grades and sizes are available to serve consumers' needs. The amendments are consistent with the objectives of the act of promoting orderly

marketing and protecting the interest of consumers.

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice and other available information, it is hereby found that the amended regulations, as hereinafter set forth, are in accordance with said amended marketing agreement and order and will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of these amendments until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of proposed rulemaking concerning these amendments, with an effective date of November 15, 1976, was published in the FEDERAL REGISTER on October 13, 1976 (41 FR 44865), and no objection to these amendments or such effective date was received; (2) the recommendation and supporting information for regulation of the aforesaid fruits during the period specified herein were submitted to the Department after an open meeting of the Growers Administrative Committee on September 9, 1976, which was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; and (3) compliance with the amendments will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

Order 1. The provisions of § 905.564 (Orange Regulation 75: 41 FR 42177) are amended to read as follows:

§ 905.564 Orange Regulation 75.

(a) During the period November 15, 1976, through September 25, 1977, no handler shall ship between the production area and any point outside thereof

in the continental United States, Canada, or Mexico:

(1) Any oranges, except Navel oranges, Temple oranges, Murcott Honey oranges, and Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which do not grade at least U.S. No. 1;

(2) Any oranges, except Navel oranges, Temple oranges, Murcott Honey oranges, and Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which are of a size smaller than 2½ inches in diameter, except that a tolerance for such oranges smaller than such minimum diameter shall be permitted as specified in § 51.1152 of the United States Standards for Grades of Florida Oranges and Tangelos: *Provided*, That such tolerance for such oranges shall be based only on those oranges in a lot which are of a size 2½ inches in diameter or smaller;

(3) Any Navel oranges, grown in the production area, which do not grade at least U.S. No. 1 Golden;

(4) Any Navel oranges, grown in the production area, which are of a size smaller than 2½ inches in diameter, except that a tolerance for Navel oranges smaller than such minimum diameter shall be permitted as specified in § 51.1152 of the United States Standards for Grades of Florida Oranges and Tangelos;

(5) Any Temple oranges, grown in the production area, which do not grade at least U.S. No. 1;

(6) Any Temple oranges, grown in the production area, which are of a size smaller than 2½ inches in diameter, except that a tolerance for Temple oranges smaller than such minimum diameter shall be permitted as specified in § 51.1152 of the United States Standards for Grades of Florida Oranges and Tangelos;

(7) Any Murcott Honey oranges, grown in the production area, which do not grade at least Florida No. 1 grade for murcotts;

(8) Any Murcott Honey oranges, grown in the production area, which are of a size smaller than 2½ inches in diameter, except that a tolerance for Murcott Honey oranges smaller than such minimum diameter shall be permitted as specified in § 51.1818 of the United States Standards for Grades of Florida Tangerines;

(9) Any Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which do not grade at least U.S. No. 1; and

(10) Any Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which are of a size smaller than 2½ inches in diameter, except that a tolerance for such oranges smaller than such minimum diameter shall be permitted as specified in § 51.1152 of the United States Standards for Grades of Florida Oranges and Tangelos: *Provided*, That such tolerance for such oranges

shall be based only on those oranges in a lot which are $2\frac{1}{16}$ inches in diameter or smaller.

(b) During the period November 15, 1976, through September 25, 1977, no handler shall ship to any destination outside the continental United States other than to Canada or Mexico:

(1) Any oranges, except Navel oranges, Temple oranges, Murcott Honey oranges, and Valencia, Lue Gim Gong and similar late maturing oranges of the Valencia type, grown in the production area, which do not grade at least U.S. No. 1;

(2) Any oranges, except Navel oranges, Temple oranges, Murcott Honey oranges, and Valencia, Lue Gim Gong and similar late maturing oranges of the Valencia type, grown in the production area, which are of a size smaller than $2\frac{1}{16}$ inches in diameter, except that a tolerance for such oranges smaller than such minimum diameter shall be permitted as specified in § 51.1152 of the United States Standards for Grades of Florida Oranges and Tangelos;

(3) Any Navel oranges, grown in the production area, which do not grade at least U.S. No. 1 Golden;

(4) Any Navel oranges, grown in the production area, which are of a size smaller than $2\frac{1}{16}$ inches in diameter, except that a tolerance for Navel oranges smaller than such minimum diameter shall be permitted as specified in § 51.1152 of the United States Standards for Grades of Florida Oranges and Tangelos;

(5) Any Temple oranges, grown in the production area, which do not grade at least U.S. No. 1;

(6) Any Temple oranges, grown in the production area, which are of a size smaller than $2\frac{1}{16}$ inches in diameter, except that a tolerance for Temple oranges smaller than such minimum diameter shall be permitted as specified in § 51.1152 of the United States Standards for Grades of Florida Oranges and Tangelos;

(7) Any Murcott Honey oranges, grown in the production area, which do not grade at least Florida No. 1 grade for murcotts;

(8) Any Murcott Honey oranges, grown in the production area, which are of a size smaller than $2\frac{1}{16}$ inches in diameter, except that a tolerance for Murcott Honey oranges smaller than such minimum diameter shall be permitted as specified in § 51.1818 of the United States Standards for Grades of Florida Tangerines;

(9) Any Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which do not grade at least U.S. No. 1; and

(10) Any Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which are of a size smaller than $2\frac{1}{16}$ inches in diameter, except that a tolerance for such oranges smaller than such minimum diameter shall be permitted as specified in § 51.1152 of the United States Standards for Grades of Florida Oranges and Tangelos.

(c) Terms used in the amended marketing agreement and order shall, when

used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; Florida No. 1 grade for murcotts shall have the same meaning as provided in Rule No. 20-35.03 of the Regulations of the Florida Department of Citrus, and all other terms relating to grade and diameter, as used herein, shall have the same meaning as is given to the respective term in the revised United States Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140-51.1180) or the revised United States Standards for Florida Tangerines (7 CFR 51.1810-51.1835).

2. The provisions of § 905.565 (Grapefruit Regulation 77; 41 FR 42177) are amended to read as follows:

§ 905.565 Grapefruit Regulation 77.

(a) During the period November 15, 1976, through September 25, 1977, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(1) Any seeded grapefruit, grown in the production area, which do not grade at least U.S. No. 1;

(2) Any seeded grapefruit, grown in the production area, which are of a size smaller than $3\frac{1}{16}$ inches in diameter, except that a tolerance for seeded grapefruit smaller than such minimum diameter shall be permitted as specified in § 51.761 of the United States Standards for Grades of Florida Grapefruit;

(3) Any seedless grapefruit, grown in the production area, which do not grade at least Improved No. 2; or

(4) Any seedless grapefruit, grown in the production area, which are of a size smaller than $3\frac{1}{16}$ inches in diameter, except that a tolerance for seedless grapefruit smaller than such minimum diameter shall be permitted as specified in § 51.761 of the United States Standards for Grades of Florida Grapefruit.

(b) During the period November 15, 1976, through September 25, 1977, no handler shall ship to any destination outside the continental United States other than to Canada or Mexico:

(1) Any seeded grapefruit, grown in the production area, which do not grade at least U.S. No. 1;

(2) Any seeded grapefruit, grown in the production area, which are of a size smaller than $3\frac{1}{16}$ inches in diameter, except that a tolerance for seeded grapefruit smaller than such minimum diameter shall be permitted as specified in § 51.761 of the United States Standards for Grades of Florida Grapefruit;

(3) Any seedless grapefruit, grown in the production area, which do not grade at least Improved No. 2; or

(4) Any seedless grapefruit, grown in the production area, which are of a size smaller than $3\frac{1}{16}$ inches in diameter, except that a tolerance for seedless grapefruit smaller than such minimum diameter shall be permitted as specified in § 51.761 of the United States Standards for Florida Grapefruit.

(c) Terms used in the amended marketing agreement and order, including Improved No. 2 grade, shall, when used

herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, except Improved No. 2 grade, and diameter, as used herein, shall have the same meaning as is given to the respective term in the revised United States Standards for Grades of Florida Grapefruit (7 CFR 51.750-51.784).

3. The provisions of § 905.567 (Tangelo Regulation 48; 41 FR 42177) are amended to read as follows:

§ 905.567 Tangelo Regulation 48.

(a) During the period November 15, 1976, through September 25, 1977, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(1) Any tangelos, grown in the production area, which do not grade at least U.S. No. 1; or

(2) Any tangelos, grown in the production area, which are of a size smaller than $2\frac{1}{16}$ inches in diameter, except that a tolerance for tangelos smaller than such minimum diameter shall be permitted as specified in § 51.1152 of the United States Standards for Grades of Florida Oranges and Tangelos.

(b) During the period November 15, 1976, through September 25, 1977, no handler shall ship to any destination outside the continental United States other than to Canada or Mexico:

(1) Any tangelos, grown in the production area, which do not grade at least U.S. No. 1; or

(2) Any tangelos, grown in the production area, which are of a size smaller than $2\frac{1}{16}$ inches in diameter, except that a tolerance for tangelos smaller than such minimum diameter shall be permitted as specified in § 51.1152 of the United States Standards for Grades of Florida Oranges and Tangelos.

(c) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade and diameter, as used herein, shall have the same meaning as is given to the respective term in the revised United States Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140-51.1180).

Dated: November 2, 1976, to become effective November 15, 1976.

CHARLES R. BRADER,
Deputy Director Fruit and Vegetable Division, Agricultural Marketing Service.

(Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674).)

[FR Doc.76-32728 Filed 11-8-76;8:45 am]

PART 982—HANDLING OF FILBERTS GROWN IN OREGON AND WASHINGTON

Expenses of the Filbert Control Board, and Rate of Assessment, for the 1976-77 Fiscal Year

Notice was published in the October 8, 1976, issue of the FEDERAL REGISTER (41

FR 44407) regarding proposed expenses of the Filbert Control Board, and rate of assessment, for the 1976-77 fiscal year. The proposal was under §§ 982.60 and 982.61 of the marketing agreement, as amended, and Order No. 982, as amended (7 CFR Part 982), regulating the handling of filberts grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The total expenses proposed in the notice were \$41,014 and the assessment rate proposed was 0.226 cent per pound of assessable filberts.

The notice afforded interested persons an opportunity to submit written data, views, or arguments with respect to the proposal. One comment was received. The assessment rate calculated as cents per pound in the notice was 0.226 cent per pound. The comment received requested revision of the figure to 0.225 cent per pound. The Filbert Control Board's basic assessment rate was based on \$4.50 per ton which when converted to cents per pound would equal the requested revision of 0.225 cent per pound. The final assessment rate acknowledges this comment.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Filbert Control Board, and other available information, it is found that the expenses of the Filbert Control Board, and rate of assessment for the fiscal year beginning August 1, 1976, shall be contained in a new § 982.321 in Subpart—Operating Reserve Fund; Budget of Expenses and Rate of Assessment (7 CFR 982.300, 982.319).

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The relevant provisions of the marketing agreement and this part require that the rate of assessment fixed for a particular fiscal year shall be applicable to all assessable filberts from the beginning of such year; and (2) the current fiscal year began on August 1, 1976, and the rate of assessment herein-after fixed will automatically apply to all such assessable filberts beginning with that date.

Section 982.321 reads as follows:

§ 982.321 Expenses of the Filbert Control Board and rate of assessment for the 1976-77 fiscal year.

(a) *Expenses.* Expenses in the amount of \$41,014 are reasonable and likely to be incurred by the Filbert Control Board during the fiscal year beginning August 1, 1976, for its maintenance and functioning and for such purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for said fiscal year, payable by each handler in accordance with § 982.61, is fixed at 0.225 cent per pound of filberts.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: November 3, 1976.

CHARLES R. BRADER,
Deputy Director,
Fruit and Vegetable Division.

[FR Doc.76-32877 Filed 11-8-76; 8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regulations, Amendment 1]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—General Regulations Governing Price Support for the 1976 and Subsequent Crops

The regulations issued by Commodity Credit Corporation (CCC) published at 41 FR 22334 containing the General Regulations Governing Price Support for the 1976 and Subsequent Crops of Grains and Similarly Handled Commodities are hereby amended as follows:

1. Paragraph (g) of § 1421.3 is amended to provide that approved cooperatives are eligible to obtain price support only on warehouse stored commodities on behalf of their members. The amended paragraph reads as follows:

§ 1421.3 Eligible producer.

(g) *Approved cooperative.* A cooperative marketing association which is approved by the Executive Vice President, CCC, pursuant to Part 1425 of this chapter, to obtain price support on a crop of rice, soybeans, or tung oil may obtain price support on the eligible warehouse stored production of such crop of the commodity on behalf of its members. The term "producer" as used in this subpart and on applicable forms shall refer both to an eligible producer as defined in paragraphs (a), (b), and (c) of this section and to an approved cooperative marketing association.

2. Paragraph (c) of § 1421.9 is amended to provide that, in States which prohibit the offering as collateral security of warehouse receipts issued by a warehouseman on his own commodity, the warehouseman may offer such receipts to CCC for loans or purchases provided the warehouseman is licensed and operating under the U.S. Warehouse Act. In such States, if the warehouseman is not licensed and operating under the U.S. Warehouse Act, the warehouseman may deliver his commodity to CCC for purchases if the warehouse receipt is issued in the name of CCC. The amended paragraph reads as follows:

§ 1421.9 Warehouse receipts.

(c) *Where warehouseman is also owner.* If the receipt is issued for a commodity which is owned by the warehouseman, either solely, jointly, or in common with others, the fact of such ownership

shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on his own commodity is invalid the warehouseman may offer his commodity to CCC for loan or purchase if such warehouse is licensed and operating under the U.S. Warehouse Act. In such States, if the warehouseman is not licensed and operating under the U.S. Warehouse Act, the warehouseman may deliver his commodity to CCC for purchase if the warehouse receipt is issued in the name of CCC.

3. Paragraph (b) of § 1421.17 is amended to provide that a rice producer who produces over his eligible production may commingle his eligible and ineligible rice. The amended paragraph reads as follows:

§ 1421.17 Farm storage loans.

(b) *Commingle eligible and ineligible commodity.* (1) Except as provided in subparagraph (2) or when stored in an approved warehouse, if a quantity of an eligible commodity is commingled with a quantity of the commodity which is ineligible for price support, the entire quantity shall be ineligible for price support.

(2) A rice producer who produces over his eligible production on a farm which has an acreage allotment or to which a producer allotment has been allocated may commingle both his eligible and ineligible rice and be eligible to obtain price support on the amount of rice considered eligible.

Since loans are now being made on the 1976 crop and the provisions of this amendment are needed to carry out the loan program, it is found and determined that compliance with the notice of proposed rulemaking procedure would be impractical and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 105, 107, 301, 401, 405, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1441 note, 1445a, 1447, 1421, 1425).)

Effective date: November 9, 1976.

Signed at Washington, D.C., on November 2, 1976.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc.76-32880 Filed 11-8-76; 8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Amendment Exempting Bunker Fuels Sales From Export Sales Deduction of Domestic Crude Oil Allocation Program

On October 14, 1976, the Federal Energy Administration (the "FEA") issued

a notice of proposed rulemaking and public hearing (41 FR 46011, October 19, 1976) to amend the domestic crude oil allocation program (the "entitlements program") to exempt permanently Bunker C and Navy Special fuel oils and No. 4 diesel for marine use on voyages departing from a port in the United States from the requirements of § 211.67(d)(2) for a refiner to deduct its export sales from its crude oil runs. The amendment as proposed provided for modification of the entitlements program effective November 1, 1976 to make permanent the provisions of Special Rule No. 7 to Subpart C which has heretofore operated to exempt such sales from these export sale deduction requirements for the period May 1976 through October 31, 1976.

The amendments adopted today provide for the exemption of such bunker sales from the deduction requirement in the same manner as that provided for by Special Rule No. 7 and as set forth in the October 14 proposal. These amendments do not operate to exempt cargo sales of bunker fuels for shipment and consumption abroad. Such cargo sales were not covered under the terms of the Special Rule No. 7 exemption and the amendments adopted hereby continue that treatment.

A public hearing on the October 14 proposal was scheduled to be held on October 29, 1976. Two persons that had requested to present oral statements subsequently withdrew their requests, and the hearing was therefore cancelled. FEA did receive a number of written comments on its proposal, the great majority of which favored the permanent exemption of bunker fuels from any entitlement loss as has been provided under Special Rule No. 7. A number of the comments received responded to FEA's specific request for comments on whether other fuels, such as certain middle-distillate products not currently covered by Special Rule No. 7 and used as marine bunker fuels, should also qualify for the exemption. Based on its further consideration of this matter FEA has determined not to expand the coverage of the amendments adopted hereby to export sales of these middle distillate products in that, while they may be used in a limited number of cases for bunkering purposes, they are not generally used in international voyages and therefore would not normally be exports.

Based on its review of the comments received from producers and consumers of bunker fuels and its own further consideration, FEA's initial conclusion has been confirmed that the permanent exemption as proposed would serve to retain within the domestic economy a measure of the entitlement benefits associated with the production of bunker fuels and would eliminate unnecessary increased administrative burdens that could possibly arise if a rule were in effect that distinguished sales made for coast-

wise trade from those made for international voyages. In addition FEA is satisfied that the amendments as adopted today will also minimize possible interference with the operation of the domestic bunker fuels market and will therefore further the objectives set forth in sections 4(b)(1) (H) and (I) of the Emergency Petroleum Allocation Act of 1973, as amended.

The amendments adopted today in no way affect the treatment of residual fuel sales for bunkering purposes in the East Coast refining district with respect to the 50 percent deduction from a refiner's crude runs under § 211.67(d)(4). As has been the case during the effectiveness of Special Rule No. 7, domestically produced residual fuel oil sold as bunker fuel into this district is subject to the § 211.67(d)(4) deduction requirements.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185).

In consideration of the foregoing, Part 211, Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below, effective November 1, 1976.

Issued in Washington, D.C., November 3, 1976.

MICHAEL F. BUTLER,
General Counsel.

Section 211.67 of Part 211 is amended in subparagraph (2) of paragraph (d) to read as follows:

§ 211.67 Allocation of domestic crude oil.

(d) *Adjustments to volume of crude oil runs to stills.*

(2) The volume of a refiner's crude oil runs to stills in a particular month for purposes of the calculations in paragraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio shall be reduced by that refiner's volume of export sales under § 212.53 of Part 212 of this chapter in that month of refined petroleum products (including aviation fuels as defined in § 211.142 of this part, but excluding refined lubricating oils) and residual fuel oil, including sales to a domestic purchaser which certifies the product is for export; provided, however, that the volume of a refiner's crude oil runs to stills for a month shall not be reduced by that refiner's volume of export sales of Bunker C and Navy Special fuel oils and No. 4 diesel, which are sold for use as a marine fuel on a voyage departing from a United States port.

[FR Doc.76-32798 Filed 11-3-76; 5:05 pm]

Title 14—Aeronautics and Space
CHAPTER II—CIVIL AERONAUTICS
BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS
(Regulation ER-974, Docket 29380, Amendment and Reissuance of Part 232)

PART 232—TRANSPORTATION OF MAIL;
REVIEW OF ORDERS OF POSTMASTER
GENERAL

Amendment and Reissuance

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., November 3, 1976.

Effective: December 9, 1976.

Adopted: November 3, 1976.

By Notice of Proposed Rulemaking EDR-299¹ the Board proposed to amend and reissue Part 232 of its Economic Regulations so as to expand the pleading requirements for review of orders of the Postmaster General under section 405(b) of the Federal Aviation Act of 1958, as amended, 72 Stat. 760; 49 U.S.C. 1375.

Pursuant to the Notice, comments were filed by Braniff Airways, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Trans World Airlines, Inc., and the United States Postal Service. All but one of the comments supported the Board's objective of providing a more complete record for decision within the limited time available in section 405(b) cases. The comments also recommended several changes in the proposed rule.

Upon consideration, the Board has decided to adopt the proposed rule with certain modifications discussed below. The tentative findings and conclusions set forth in EDR-299 are incorporated and made final, except as modified, and all requests contained in the comments are denied unless specifically granted herein.

1. *General Comments.* Section 405(b) empowers the Postmaster General (PMG): (1) To designate for the transportation of mail any schedule of aircraft regularly operated by an air carrier; (2) by order, to require an air carrier to establish additional schedules for the transportation of mail; and (3) by order, to disapprove, alter, or amend any schedule or change made by the carrier in any schedule designated or ordered by the PMG for the transportation of mail. An order of the PMG under section 405(b) will not become effective until ten days after issuance. Prior to the expiration of the ten-day period any person aggrieved may apply to the Board for review of the order. The Board may revise, suspend, or cancel such order or may postpone its effective date pending review.

By issuing the proposed rule the Board sought to expand the pleading requirements for review of PMG orders so that the Board could better assess the eco-

¹ Dated June 9, 1976, Docket 29380, 41 FR 23978.

economic impact of the order on the carrier, the Postal Service's need for the order, and alternatives to the order. In particular, EDR-299 would require the submission of data bearing on the economic characteristics of the schedule affected by the order, the nature of the mail delivery in question, and alternative services available for transportation of the mail. The proposed rule also would establish new provisions for answers to applications for review, applications to postpone PMG orders, and answers to applications to postpone.

Only Braniff objected to the proposed revision of Part 232 as unnecessary and unduly burdensome on all parties. All the other responding carriers and the Postal Service expressed support for the Board's goal of producing a more complete record for decision in section 405(b) cases. In light of the general approval contained in the comments and in view of our past experience under section 405 (b), we adhere to the position that more detailed information should be supplied in the pleadings so that the Board can make an informed decision within the narrow time constraints of the Act. We are confident that the requirements of the revised rule are within the parties' ability to comply.

2. Applications for Review. The proposed rule required that detailed information be supplied in applications for review of PMG orders, particularly where the order dealt with a carrier-initiated schedule change. The final rule retains these pleading requirements with slight modifications.

The proposed rule would have required the applicant to submit economic data on the schedules affected by the PMG order only in cases where the order disapproved, suspended, or modified a carrier-initiated schedule change. The Board had tentatively concluded that such economic information need not be submitted in cases where the order requires a carrier to establish additional schedules, because the applicant might not have such data readily available. After consideration of the comments, the Board adheres to this view with one exception. We believe it is necessary to obtain some economic data from the affected carrier in every case because the issue of economic impact of the order on the carrier is central to the Board's review. Therefore, our final rule provides that the applicant must submit an estimate of the economic impact (including nonmail revenues) on the carrier of complying with the PMG order in all cases, regardless of the type of order issued. We shall, of course, expect such estimate to be less detailed in cases where the order does not relate to a carrier's schedule change but instead requires the carrier to establish additional schedules.

In response to comments from carriers we have made certain modifications in the data requirements for review of orders dealing with carrier-initiated schedule changes. First, the application for review need not discuss flight history beyond the last three years. This limitation, which did not appear in the pro-

posed rule, will reduce the burden on the applicant and avoid cluttering the record. Second, we are persuaded that to require profit and loss data by CAB functional account number would place an undue burden on the carriers, many of whom do not maintain current records of flight profitability on such a basis. Accordingly, we will permit the submission of profitability data by other accounting methods, providing costs are determined on a fully allocated basis and the application explains the accounting method in complete detail. Third, we have added a requirement that the carrier indicate whether it is willing to seat-load sack mail on the flight in question. This information, coupled with container data to be supplied by the Postal Service, will enable the Board to determine more accurately the space available for mail delivery and thereby to assess the suitability of the particular flight for the mail delivery ordered by the PMG.

We have also made certain editorial changes for clarification of § 232.1. In response to a request from Delta, paragraph (b) (5) has been changed to read, in part, "total economic impact," rather than "economic impact" as in the proposed rule. By this change we wish to emphasize that the Board will not exclude from consideration data generally considered in the past, such as return and tax requirements for the ordered flight and the costs of positioning flights necessary to provide the ordered flight. Finally, paragraph (c) has been reworded to clarify that an application for review of an order which does not relate to a change which the carrier sought to make in its own schedule may omit items (6) through (11) of subsection (b).

3. Answers to applications for review. In response to both carrier and Postal Service comments we have revised § 232.2 to conform to current Postal Service operating procedures and to provide the Board with data tailored to the specific flight and mail delivery in question. Accordingly, the reference in the proposed rule to priority and nonpriority classes of mail has been deleted, since the Postal Service no longer maintains separate data on these classes. In lieu of data by class, the final rule calls for the Postal Service to measure the impact of the flights in question on the mail delivery time standards established by the Postal Service. Secondly, the Postal Service will be required in its answer to submit data on mail density and container types. From these data it is hoped that the Board and the affected carrier can better judge the suitability of the aircraft and flight in question for the particular mail delivery ordered by the PMG. Thirdly, § 232.2(b) (2) has been modified to require the Postal Service to present a cost comparison in its discussion of alternative mail transport services.

4. Replies to answers. The proposed rule made no provision for carriers or other interested persons to reply to answers opposing or supporting review applications. A number of carriers asserted that a right to reply is warranted because there is presently no opportunity

to respond to the arguments of the Postal Service in Support of the PMG order. The carriers contend that since the PMG need not accompany his order with any supporting statements, the justifications for the order will appear for the first time in the answer of the Postal Service opposing review. In view of these comments we have added a new provision to Part 232 instituting a reply pleading. The rule allows any interested person to file a reply within seven days of the filing of an answer.

To accommodate the new reply provision, set forth in § 232.3, §§ 232.3 and 232.4 of the proposed rule have been renumbered as §§ 232.4 and 232.5, respectively.

5. Postponement of PMG orders. Several carriers objected to the proposed timetable (three days for applications, five days for answers) for filing pleadings dealing with postponement of PMG orders. We recognize the difficulty of complying with short filing periods, but we must abide by the time constraints of the Act. Section 405(b) provides that the orders of the PMG become effective ten days after issuance. The Board can postpone a PMG order only on the application of an aggrieved carrier. Applications for postponement and answers thereto must be filed within sufficient time to allow the Board to consider the merits of postponement and prepare an appropriate order within ten days after issuance of the PMG order. However, upon consideration of the comments, we have determined to alleviate the burden on the carriers somewhat by allowing four days for applications to postpone and four days for answers to such applications.² We believe that this timetable is as equitable as possible within the limited time available under section 405(b).

In response to questions raised in the comments, the final rule makes clear that the filing periods for postponement applications and answers are to be measured by calendar days, to conform to the statutory period of ten calendar days allowed for Board action on postponement applications. In the event that the last day of a filing period falls on a non-business day for the Board, the period is extended to the next business day.³ How-

² A number of carriers raised the possibility that they might be unable to meet the filing deadline for postponement applications if the carrier did not receive the PMG order until two or three days after issuance. The carriers asserted that such late receipt was not unlikely in view of the possibility of slow mail delivery or delivery on a weekend. In such case the carrier is free to file a motion for leave to file late. The same course is open to the Postal Service in the event that late receipt of an application to postpone makes compliance with the filing deadline for answers impossible. In such cases the Board will consider the method of delivery and time of receipt of the order or application in determining whether to accept the late pleading.

³ However, no extension is made for intermediate nonbusiness days. For example, if the PMG order is issued on a Friday, an application for postponement must be filed by the following Tuesday, assuming Tuesday is not a holiday for the Board.

ever, even though the postponement filing periods may thus exceed four days in some cases, the Board is still obligated to act on the application no later than ten calendar days after issuance of the order. In order for the Board to consider the merits of postponement, both the application and answer thereto must be filed in sufficient time to allow the Board to act before expiration of the ten day period. Therefore, the final rule provides that the Board need not consider an answer to a postponement application filed later than eight days after issuance of the PMG order.

6. *Filing and service of pleadings.* Two carrier comments suggested that the effect of short filing periods could be eased by requiring telegraphic delivery of orders, applications, and answers. While we agree that telegraphic delivery would alleviate the difficulty of complying with filing deadlines, the Board has no power to require the PMG to issue his orders to affected carriers by telegraph. Therefore, the Board believes the appropriate course is to encourage, but not require, telegraphic delivery of PMG orders and all pleadings under section 405(b) to the Board and to affected parties. Section 232.5 has been modified to permit copies of applications, answers, and replies to be served upon affected carriers and the Postal Service by telegraph as well as by personal service or registered mail.

In consideration of the foregoing, the Board hereby revises and reissues Part 232 of the Economic Regulations (14 CFR Part 232) effective December 9, 1976, as follows:

- Sec.
232.1 Applications for review.
232.2 Answers to applications for review.
232.3 Replies to answers to applications for review.
232.4 Applications to postpone the effective date of an order of the Postmaster General; answers thereto.
232.5 Filing and service of application, answers, and replies.

AUTHORITY: Sections 204 and 405 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760; 49 U.S.C. 1324, 1375.

§ 232.1 Applications for review.

(a) Any person who would be aggrieved by an order of the Postmaster General issued under and within the meaning of section 405(b) of the Act may, within not more than 10 days after the issuance of such order, apply to the Board for a review thereof.

(b) An application for review filed under this part shall be made in writing and shall be conspicuously entitled Application for Review of Order of the Postmaster General under section 405(b) of the Act. Except as otherwise provided in paragraph (c) of this section, such application for review shall specify:

- (1) The schedule affected and identity of the order complained of;
- (2) The manner in which the applicant is or would be aggrieved by the order;
- (3) The relief sought;
- (4) The facts relied upon to establish that the public convenience and necessity require that such order be amended,

revised, suspended, or canceled by the Board;

(5) An estimate of the total economic impact (including nonmail revenues) on the carrier of complying with the Postmaster General's order;

(6) A history of the flight or flights in question and any predecessor flights operated in the market at or about the same hours, including when they were first operated and whether they have been operated continuously since that time: *Provided*, That this history need not extend beyond the last three years;

(7) A detailed statement of the reasons for the schedule change, including copies of any economic data considered by carrier management in reaching that determination;

(8) Any other schedule changes in the affected market which accompany the schedule change in question, or a statement to the effect that there are no such changes;

(9) Monthly load-factor data on the flight or flights in question for the most recent twelve-month period;

(10) Profit and loss data for the flight or flights in question for the most recent twelve-month period, provided that the data be submitted on a fully allocated cost by CAB functional account number or by some other method in which costs are determined on a fully allocated basis and which is explained in complete detail; and

(11) A statement indicating whether the carrier is willing to seatload sack mail on the flight or flights in question.

(c) Where the application is for review of an order which does not involve disapproval, alteration, or amendment of a change or changes which a carrier sought to make in its own schedule(s), the application need not include items 6 through 11, inclusive, specified in paragraph (b) of this section.

§ 232.2 Answers to applications for review.

(a) Any interested person may, within not more than ten days after the filing of an application for review, serve and file with the Board an answer in opposition to, or in support of, such applications. Such answer shall set forth the economic data and other facts upon which it is based.

(b) An answer of the Postmaster General or U.S. Postal Service shall contain the following particular information, where applicable:

(1) The Postal Service's critical time frame for the movement of the mail in question together with a detailed explanation of the operational factors which support that estimate;

(2) The alternate air and surface services (including air taxi service) available in the market in question together with a statement of the costs of using such alternate services and, where appropriate, an explanation of why such services are unacceptable;

(3) An estimate of the average amount and expected actual density of mail which will be tendered to the carrier if the order in question is upheld;

(4) An estimate of the amount and type of containers which will be tendered to the carrier if the order in question is upheld;

(5) The volume (including density of mail, amount and types of containers) of mail historically carried on the flight or flights in question;

(6) An estimate of the volume (including density of mail, amount and types of containers) of mail historically carried on the flight or flights in question which could be accommodated on other flights serving the market without significant impairment of service under the mail delivery time standards of the Postal Service, together with an explanation of how that estimate was computed; and

(7) An estimate of the impact of the flight or flights in question on mail delivery time standards of the Postal Service, together with an explanation of how that estimate was computed.

§ 232.3 Replies to answers to applications for review.

Any interested person may, within not more than seven days after the filing of an answer to an application for review, serve and file with the Board a reply in opposition to, or in support of, such answer.

§ 232.4 Applications to postpone the effective date of an order of the Postmaster General; answers thereto.

(a) Any person who would be aggrieved by an order of the Postmaster General within the meaning of section 405(b) of the Act may, within not more than four calendar days after the issuance of such order, apply to the Board for a postponement of the effective date of that order pending review: *Provided*, That if the final day of the four day period is a Saturday, Sunday, or holiday for the Board, the application may be filed with the Board no later than the end of the next day which is neither a Saturday, Sunday, or holiday.

(b) An application for postponement of the effective date filed under this part may be made in writing or by telegram, and shall be conspicuously entitled Application for Postponement of the Effective Date of Order of the Postmaster General Pending Review Under section 405(b) of the Act. Such application for postponement shall specify:

- (1) The schedule affected and identity of the order complained of;
- (2) The manner in which the applicant is or would be aggrieved by the order;
- (3) The relief which will be sought;
- (4) That the applicant intends to file a timely application for review of the order under § 232.1; and

(5) a summary of the justification and facts relied upon to establish that the stay should be granted.

(c) Any interested person may, within not more than four calendar days after the service of an application for postponement of the effective date, serve and file with the Board an answer in opposition to, or in support of, the application: *Provided*, That if the final day of the four

day period is a Saturday, Sunday, or holiday for the Board, the application may be filed with the Board no later than the end of the next day which is neither a Saturday, Sunday, or holiday: *Provided further, however*, That the Board need not consider any answer filed later than eight calendar days after issuance of the Postmaster General's order.

§ 232.5 Filing and service of applications, answers, and replies.

(a) An application, answer or reply filed hereunder shall be deemed to have been filed on the date on which it is actually received by the Board at its offices in Washington, D.C.

(b) At the time a written or telegraphic application, answer, or reply is filed under this part, a copy thereof shall be served by personal service, registered mail, or telegraph upon the Postmaster General and upon the air carrier operating or ordered to operate the mail service in question. Except in the case of telegraphic delivery each copy so served shall be accompanied by a letter of transmittal stating that such service is being made pursuant to this section. In the case of telegraphic delivery the copy shall be accompanied by a telegraphic statement that service is being made pursuant to this section.

(c) The execution, number of copies, and verification of a written application, answer, or reply filed under this part, and the formal specifications of papers included in such application, answer, or reply shall be in accordance with the requirements of the Rules of Practice relating to applications generally (see Part 302 of this chapter).

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 76-32934 Filed 11-8-76; 8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket C-2837]

PART 13—PROHIBITED TRADE PRACTICES AND AFFIRMATIVE CORRECTIVE ACTIONS

Relco, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.135 Nature of product or service; § 13.155 Prices; § 13.155-40 Exaggerated as regular and customary; § 13.170 Qualities or properties of product or service; § 13.170-96 Waterproof, waterproofing, water-repellent; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation; § 13.533-55 Refunds, rebates and/or credits. Subpart—Misrepresenting oneself and goods—Goods: § 13.1685 Nature; § 13.1710 Qualities or properties; § 13.1740 Scientific or other relevant facts. Subpart—Misrepresenting oneself and goods—Prices: § 13.1805

Exaggerated as regular and customary. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1863 Limitations of product; § 13.1870 Nature; § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts. Subpart—Offering unfair, improper and deceptive inducements to purchase or deal: § 13.2063 Scientific or other relevant facts.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

In the matter of Relco, Inc., a corporation and Richard T. Harris, as an officer of said corporation.

Consent order requiring a Houston, Tex., electronics manufacturer, among other things to cease misrepresenting the characteristics of its metal detector; misrepresenting the regular selling price of its dog trainer collar; misrepresenting that its trainer collar is waterproof; and failing to disclose relevant facts regarding its products. Further, respondents are required to offer purchasers a 10-day money-back guarantee.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

ORDER

It is ordered, That respondents Relco, Inc., a corporation, its successors and assigns, its officers, and Richard T. Harris as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation or subsidiary, division or other device, in connection with the advertising, offering for sale, or distribution of electronic metal detectors, animal training collars, welders, or other electronic items in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from representing, directly or by implication, orally or in writing, or visually, that:

1. Relco Metal Detector models are the most powerful in their respective price group.

2. Sensitronix, an electronic dog trainer collar, is regularly priced at any figure unless substantial sales have been made at said figure or amount in the recent and regular course of respondents' business.

3. Any of the dog trainer collars are completely waterproof.

4. The range of the Sensitronix trainer is six (6) linear miles or greater.

5. Relco Metal Detectors will detect coins, minerals, ores, metals, etc., at any specific depth without qualification as to soil contents.

It is further ordered, That respondents shall cease and desist from:

1. Making any statement or representation in any advertisement, promotional material, or any oral sales promotion or solicitation for any product, unless such statement or representation is based upon and supported by prior, in-

¹ Copies of the Complaint, Decision and Order filed with the original document.

dependent fully documented, adequate and well-controlled scientific studies or tests;

2. Failing to maintain copies of all documentation for the studies referred to in subparagraph (1) of this paragraph.

It is further ordered, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail solicitation literature, and any other promotional literature used in the advertising, promotion and sales of respondents' products.

It is further ordered, That respondents shall include a written statement with the purchase of any Relco Metal Detector or dog trainer collar that the purchaser may, within ten (10) days of date of purchase or date of receipt, whichever is later, receive a refund of any monies paid for the merchandise if for any reason the purchaser is dissatisfied with the product.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all agencies, operating divisions and all their present and future personnel engaged in the manufacturing, advertising, offering for sale or sale and/or distribution of respondents' products, and that respondents secure a signed statement acknowledging receipt of said order from each such person or agency.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in either the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Dole not participating by reason of absence.

The Decision and Order was issued by the Commission September 17, 1976.

CHARLES A. TOBIN,
Secretary.

COMPLAINT

In the matter of Relco, Inc., a corporation, and Richard T. Harris, as an officer of said corporation.

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Relco, Inc., a corporation, and Richard T. Harris, as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph one: Respondent Relco, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 2210 West 34th Street, Houston, Texas 77018.

Respondent Richard T. Harris is President of the corporate respondent. He formulates, directs and controls the acts, policies and practices of corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Paragraph two: Respondents are now, and for some time last past have been, engaged in the manufacture, advertising, offering for sale, sale and distribution of electronic metal detectors, animal training collars, welders and other electronic equipment, to members of the general public.

Paragraph three: In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from respondent's place of business in the State of Texas to purchasers thereof located in various other states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Paragraph four: In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, respondents have made numerous statements and representations in newspaper advertisements, magazine advertisements and other promotional literature respecting the capabilities and characteristics of their product.

Typical and illustrative of the statements and representations contained in said advertisements and promotional material, but not all inclusive thereof, are the following:

"\$19.95 up. Five Powerful Models. New Relco Detectors Send Electronic Beam Far Into Earth To Seek Treasures Lost or Hidden Throughout The Centuries. Signals When Object is Detected. Most Powerful Made."

"Half Price Sale on America's Largest Selling Electronic Trainer. Regular \$198, Now Half Price—\$99.00"

"Water-Proof, Climate-Proof. Collar unit is completely water-proof and works in sub-freezing cold or blazing sun. Transmitter has telescoping antenna and fits hunting jacket pocket."

"Works for Six Miles. Sensitronix's Powerful New 'Full Circle' Trainer. Controls your dog anywhere within this six mile range, over 2500 acres."

Paragraph five: By and through the use of the above quoted statements, representations and others of similar import or meaning, but not specifically set forth herein, and through statements and representations to prospective purchasers, respondents now represent, and have represented, directly or by implication, orally, in writing, or individually, that:

1. Relco Detector Models are the most powerful made in their respective price group.

2. Sensitronix, the electronic dog trainer collar, is being sold for one-half its regular price of \$198.00.

3. The collar is completely water-proof.

4. The Sensitronix collar with transmitter (trainer) has a range of six linear miles.

5. The Frontiersman model metal detector will detect a nickel buried five to seven inches, a silver dollar eight to twelve inches and a fairly large bag of coins twenty to thirty inches.

Paragraph six: In truth and in fact:

1. All Relco Metal Detector models are not the most powerful in their respective price group.

2. Sensitronix electronic trainer collar is not being sold for one-half its regular price of \$198.00 in that its usual selling price is \$99.00.

3. The Sensitronix electronic trainer collar is not water-proof.

4. The range of the Sensitronix collar and transmitter is less than six linear miles.

5. The Frontiersman model metal detector's ability to detect coins at certain depths is based on a number of parameters and no definite figures are meaningful without qualification.

Therefore, the statements and representations as set forth in Paragraphs four and five hereof were and are false, misleading and deceptive.

Paragraph seven: Furthermore, it was, and is a false, misleading and deceptive act and practice for respondents to seek to sell their products in the manner set forth in Paragraph four and five hereof, while they knew, or as reasonably prudent businessmen, should have known, that their product would not operate and produce results as represented.

Paragraph eight: In the course and conduct of their business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with other corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondents.

Paragraph nine: The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and into the purchase of substantial numbers of respondents' products by reason of said erroneous and mistaken belief(s).

Paragraph ten: The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and to respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

Wherefore, the premises considered, the Federal Trade Commission, on this 17th day of September, A.D. 1976, issues its complaint against said respondents.

By the Commission.

CHARLES A. TOBIN,
Secretary.

Commissioners: Calvin J. Coiller, Chairman, Paul Rand Dixon, Elizabeth Hanford Dole, David A. Clanton.

In the matter of Relco, Inc., a corporation and Richard T. Harris, as an officer of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of draft of the Complaint which the Dallas Regional Office proposed to present to the Commission for its consideration and which if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and the respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of the complaint, a statement that the signing of said agreement is for settlement purposes only and

does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondents have violated said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with procedures prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Relco, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2220 West 34th Street, Houston, Texas 77018.

2. Respondent Richard T. Harris, is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

Order

It is ordered, That respondents Relco, Inc., a corporation, its successors and assigns, its officers, and Richard T. Harris as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation or subsidiary, division or other device, in connection with the advertising, offering for sale, or distribution of electronic metal detectors, animal training collars, welders, or other electronic items in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from representing, directly or by implication, orally or in writing, or visually, that:

1. Relco Metal Detector models are the most powerful in their respective price group.

2. Sensitronix, an electronic dog trainer collar, is regularly priced at any figure unless substantial sales have been made at said figure or amount in the recent and regular course of respondents' business.

3. Any of the dog trainer collars are completely water-proof.

4. The range of the Sensitronix trainer is six (6) linear miles or greater.

5. Relco Metal Detectors will detect coins, minerals, ores, metals, etc., at any specific depth without qualification as to soil contents.

It is further ordered, That respondents shall cease and desist from:

1. Making any statement or representation in any advertisement, promotional material, or any oral sales promotion or solicitation for any product, unless such statement or representation is based upon and supported by prior, independent fully documented, adequate and well-controlled scientific studies or tests;

2. Failing to maintain copies of all documentation for the studies referred to in subparagraph (1) of this paragraph.

It is further ordered, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail solicitation literature, and any other promotional literature used in the advertising, promotion and sales of respondents' products.

It is further ordered, That respondents shall include a written statement with the purchase of any Relco Metal Detector or dog trainer collar that the purchaser may, within ten (10) days of the date of purchase or date of receipt, whichever is later, receive a refund of any monies paid for the merchandise if for any reason the purchaser is dissatisfied with the product.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all agencies, operating divisions, and all their present and future personnel engaged in the manufacturing, advertising, offering for sale or sale and/or distribution of the respondents' products, and that respondents secure a signed statement acknowledging receipt of said order from each such person or agency.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in either the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation of dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission, Commissioner Dole not participating by reason of absence.

Issued: September 17, 1976.

CHARLES A. TOBIN,
Secretary.

[FR Doc.76-32894 Filed 11-8-76;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[Docket No. 76F-0326]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

SANITIZING SOLUTIONS

The Food and Drug Administration is amending the food additive regulations to provide for safe use of an aqueous solution containing sodium dichloroisocyanurate and tetrasodium ethylenediaminetetraacetate as a sanitizing solution; effective November 9, 1976; objections by December 9, 1976.

Notice was given by publication in the FEDERAL REGISTER of September 3, 1976 (41 FR 37388) that a food additive petition (FAP 6H3221) had been filed by N. B. Purdy Products Co., Inc., P.O. Box 304, Wauconda, IL 60064, proposing that § 121.2547 (21 CFR 121.2547) be amended to provide for safe use of an aqueous solution containing sodium dichloroisocyanurate and tetrasodium ethylenediaminetetraacetate as a sanitizing solution on food-processing equipment and utensils and on food-contact surfaces in public eating places.

The Commissioner of Food and Drugs, having evaluated the data in the food additive petition and other relevant ma-

terial, concludes that the regulations should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c) (1), 72 Stat. 1786 (21 U.S.C. 348(c) (1))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 121 is amended in § 121.2547 by adding new paragraphs (b) (19) and (c) (14) to read as follows:

§ 121.2547 Sanitizing solutions.

(b) * * *

(19) An aqueous solution containing sodium dichloroisocyanurate and tetrasodium ethylenediaminetetraacetate. In addition to use on food-processing equipment and utensils, this solution may be used on food-contact surfaces in public eating places.

(c) * * *

(14) Solutions identified in paragraph (b) (19) of this section shall provide, when ready to use, a level of 100 parts per million of available chlorine.

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 9, 1976, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Six copies of all documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date: This regulation shall become effective November 9, 1976.

(Sec. 409(c) (1), 72 Stat. 1786 (21 U.S.C. 348(c) (1))).

Dated: November 1, 1976.

JOSEPH P. HILE,
Associate Commissioner for
Compliance.

[FR Doc.76-32717 Filed 11-8-76;8:45 am]

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 76N-0080]

PART 310—NEW DRUGS

Labeling for Digoxin Products for Oral Use

Correction

In FR Doc. 76-28559 appearing on page 43135 in the issue for Thursday, Septem-

ber 30, 1976, in § 310.500(e), in the material under "Treatment of Arrhythmias Produced by Overdosages" appearing on page 43138, in the third paragraph, 6th line, the lines now reading "(30 milliequivalents per 500 milliequivalents) is given at the rate of 20 milliequivalents per 500 milliliters)" should have read "(30 milliequivalents per 500 milliliters)".

NOTE.—This document is being reprinted without change from the issue of Monday, November 1, 1976 (41 FR 47919).

AMIKACIN; AMIKACIN SULFATE INJECTION

The Food and Drug Administration (FDA) is amending the oligosaccharide antibiotic drug regulations to provide for the certification of amikacin sulfate injection; effective November 9, 1976.

The Commissioner of Food and Drugs, having evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of amikacin sulfate injection, has concluded that the data supplied by the manufacturer concerning the subject antibiotic drug product are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 444 (21 CFR Parts 430, 436, and 444) to provide for its certification.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended:

a. In § 430.4 by adding new paragraph (a) (43) to read as follows:

§ 430.4 Definitions of antibiotic substances.

(a) * * *

(43) Amikacin. Each of the antibiotic substances produced by the acylation of the 1-amino group of the 2-deoxy-streptomycin moiety of kanamycin A with L-(-)-γ-amino-α-hydroxybutyric acid, and each of the same substances produced by any other means is a kind of amikacin.

b. In § 430.5 by adding new paragraphs (a) (59) and (b) (59) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(59) Amikacin. The term "amikacin master standard" means a specific lot of amikacin designated by the Commissioner as the standard of comparison in determining the potency of the amikacin working standard.

(b) * * *

(59) *Amikacin*. The term "amikacin working standard" means a specific lot of a homogeneous preparation of amikacin.

c. In § 430.6 by adding new paragraph (b) (61) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

(b) * * *

(61) *Amikacin*. The term "microgram" applied to amikacin means the amikacin activity (potency) contained

in 1.091 micrograms of the amikacin master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended:

a. In § 436.33 (b) by alphabetically inserting two new items into the table, as follows:

§ 436.33 Safety test.

(b) * * *

Antibiotic drug	Diluent (diluent number as listed in sec. 436.31)	Test dose		Route of administration as described in paragraph (c) of this section
		Concentration in units or milligrams of activity per milliliter	Volume in milliliters to be administered to each mouse	
Amikacin		4 5 mg	0.5	Intravenous.
Amikacin sulfate		4 do	.5	Do.

b. In § 436.106 (a) and (b) by alphabetically inserting a new item into the tables, as follows:

§ 436.106 Microbiological turbidimetric assay.

(a) * * *

Working standard stock solutions						Standard response line concentrations	
Antibiotic	Drying conditions (method number as listed in sec. 436.200)	Initial solvent	Diluent (solution number as listed in sec. 436.101(a))	Final concentration, units or milligrams per milliliter	Storage time under refrigeration	Diluent (solution number as listed in sec. 436.101(a))	Final concentrations, units or micrograms of antibiotic activity per milliliter
Amikacin.....	Not dried.....	Distilled water.	1 mg.....	2 wk.....	Distilled water.	8.0, 8.9, 10.0, 11.2, 12.5 µg.	

(b) * * *

Antibiotic	Test organism	Medium (nutrient broth)	Suggested volume of standardized inoculum to be added to each 100 ml of medium (nutrient broth)		Incubation temperature
			Milliliters	Degrees C	
Amikacin	A		3	0.1	37

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

3. Part 444 is amended:

a. In Subpart A by adding new § 444.6 to read as follows:

§ 444.6 Amikacin.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity*. Amikacin is O-3-amino-3-deoxy-α-D-glucopyranosyl (1-6)-O-[6-amino-6-deoxy-α-D-glucopyranosyl (1-4)-1-N'-[(S)-4-amino-2-hydroxy-1-oxobutyl]-2-deoxy-D-streptamine. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms per milligram on an anhydrous basis.

(ii) It passes the safety test.

(iii) Its moisture content is not more than 8.5 percent.

(iv) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 9.5 and not more than 11.5.

(v) It gives a positive identity test for amikacin.

(vi) Its residue on ignition is not more than 1.0 percent.

(vii) Its specific rotation is not less than +97° and not more than +105°.

(viii) It is crystalline.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples*. In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, moisture, pH, identity, residue on ignition, specific rotation, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency*. Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient sterile distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with distilled water to the reference concentration of 10.0 micrograms of amikacin per milliliter (estimated).

(2) *Safety*. Proceed as directed in § 436.33 of this chapter.

(3) *Moisture*. Proceed as directed in § 436.201 of this chapter.

(4) *pH*. Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(5) *Identity*. Proceed as directed in § 436.318 of this chapter.

(6) *Residue on ignition*. Proceed as directed in § 436.207(a) of this chapter.

(7) *Specific rotation*. Proceed as directed in § 436.210 of this chapter.

(8) *Crystallinity*. Proceed as directed in § 436.203(a) of this chapter.

b. In Subpart C by adding new § 444.206 to read as follows:

§ 444.206 Amikacin sulfate injection.

(a) *Requirements for certification*—

(1) *Standards of identity, strength, quality, and purity*. Amikacin sulfate injection is an aqueous solution of amikacin with suitable and harmless buffer substances and preservatives. Each milliliter contains amikacin sulfate equivalent to either 50 milligrams or 250 milligrams of amikacin. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of amikacin that it is represented to contain. It is sterile. It is non-pyrogenic. It passes the safety test. Its pH is not less than 3.5 and not more than 5.5. The amikacin used conforms to the standards prescribed by § 444.6 (a) (1).

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples*. In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The amikacin used in making the batch for potency, safety, moisture, pH, identity, residue on ignition, specific rotation, and crystallinity.

(b) The batch for potency, sterility, pyrogens, safety, and pH.

(ii) Samples required:

(a) The amikacin used in making the batch: 10 packages, each containing approximately 500 milligrams.

(b) The batch:

(1) For all tests except sterility: A minimum of 12 immediate containers.

(2) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency*. Proceed as directed in § 436.106

of this chapter, preparing the sample for assay as follows: Place an accurately measured representative portion of the sample into an appropriate-sized volumetric flask and dilute to volume with sterile distilled water to give a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 10.0 micrograms of amikacin per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e) (1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 25 milligrams of amikacin per milliliter.

(4) *Safety.* Proceed as directed in § 436.33 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

Because the conditions prerequisite to providing for certification of this drug have been complied with and the matter is noncontroversial, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date: These amendments shall be effective November 9, 1976.

(Sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357).)

Dated: November 1, 1976.

MARY A. MCENIRY,
Assistant Director for Regulatory
Affairs, Bureau of Drugs.

[FR Doc.76-32718 Filed 11-8-76;8:45 am]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Lasalocid Sodium, Roxarsone

The Food and Drug Administration approves a new animal drug application (102-485V) filed by Hoffmann-La Roche, Inc., Nutley, NJ 07110, proposing safe and effective use of lasalocid sodium with roxarsone in the manufacture of a complete feed for broiler or fryer chickens. The approval is effective November 9, 1976.

The Commissioner is amending Part 558 (21 CFR Part 558) to reflect this approval.

In accordance with § 514.11(e) (2) (i) (21 CFR 514.11(e) (2) (ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)) and under

authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 558 is amended in § 558.311 by revising paragraph (e) to read as follows:

§ 558.311 Lasalocid sodium.

(e) *Conditions of use.* It is used in feed for broiler or fryer chickens as follows:

(1) *Amount per ton.* 68 grams (0.0075 percent).

(i) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*.

(ii) *Limitations.* For broiler or fryer chickens only; feed continuously as the sole ration; withdraw 5 days before slaughter.

(2) *Amount per ton.* Lasalocid sodium, 68 grams (0.0075 percent) plus Roxarsone, 45.4 grams (0.005 percent).

(i) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima* and as an aid in the reduction of oocysts and lesions due to *E. tenella*.

(ii) *Limitations.* Feed continuously as the sole ration; as sole source of organic arsenic; withdraw 5 days before slaughter. Roxarsone provided by No. 017210 in § 510.600(c) of this chapter.

Effective date: This regulation shall be effective November 9, 1976.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: November 1, 1976.

C. D. VAN HOUWELING,
Director, Bureau of
Veterinary Medicine.

[FR Doc.76-32716 Filed 11-8-76;8:45 am]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—PAYMENT PROCEDURES

PART 140—REIMBURSEMENT

Subpart G—Reimbursement for Employment of Public Employees On Federal-Aid Projects

The three technical amendments set forth below are made to 23 CFR Part 140, Subpart G:

(1) In the second line of 23 CFR 140.703 the word "directive" is deleted and the word "subpart" is substituted therefor.

(2) The period at the end of 23 CFR 140.704(a) is deleted and the following is added at the end of that subsection: "as defined in § 140.703 of this subpart."

(3) The words "paragraph 4a." at the end of 23 CFR 140.704(b) are deleted and the words "§ 140.704(a) of this subpart." are substituted therefor.

Issued on November 2, 1976.

DOWELL H. ANDERS,
Acting Chief Counsel.

[FR Doc.76-32820 Filed 11-8-76;8:45 am]

Title 24—Housing and Urban Development CHAPTER VIII—LOW INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-387]

PART 881—HOUSING ASSISTANCE PAYMENTS PROGRAM-SUBSTANTIAL REHABILITATION

Interim Rule

On February 5, 1976, a Statement of Principles and Objectives for Housing Rehabilitation was signed by members of seven construction trade unions and the National Housing Rehabilitation Association. The Statement indicated a willingness to enter into special labor-management agreements incorporating differential terms and conditions for rehabilitation of residential housing in selected urban areas. The Statement also included a "Prototype Agreement for Rehabilitation Standards Between Local Employers and Local Union Organizations." HUD has determined to establish a Demonstration Program to test the effect of special local labor-management agreements based upon the above Statement and Prototype Agreement on Section 8 substantial rehabilitation projects.

To implement the program, HUD is publishing a Notice in the FEDERAL REGISTER (FR Doc. 76-32992, elsewhere in this issue) and interim regulations to amend Title 24 of the Code of Federal Regulations by adding to Part 881 a new Subpart D under the heading "Section 8 Housing Assistance Payments Program-Demonstration Rehabilitation Program." This program will be subject to all of the provisions of Subparts A and B of Part 881 and Subparts A, B, and C of Part 883 to the extent stated in § 881.407 of the new Subpart D.

The major features of this Demonstration Program are as follows:

1. Applications for participation in the program will be invited from localities with HAP needs and goals for substantial rehabilitation, and in which a special labor-management agreement to establish differential terms and conditions for rehabilitation projects has been or will be placed into effect.

2. Localities will be selected on the basis of certain criteria and preferences set forth in the regulations.

3. Rehabilitation developers will be invited by HUD Field Offices having jurisdiction over selected localities to submit requests for pre-qualification for eligibility for participation in the program. Pre-qualification will be for a designated number of units and will not be limited to rehabilitation developers who are signatories to the special labor-management agreement or who utilize organized employees, contractors or subcontractors.

4. Pre-qualified rehabilitation developers will be invited to submit proposals for rehabilitation in the target neighborhoods in accordance with the provisions of the Substantial Rehabilitation regulations.

The Department has determined that the public interest would be served by immediate implementation of the Demonstration Program. Therefore, the regulations are effective upon publication, on an interim basis. Written comments and suggestions will be received until November 24, 1976. HUD will make such modifications as it deems appropriate in the final rule. Comments should refer to docket number and date and be submitted to the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. A copy of each communication will be available for public inspection during regular business hours at the above address.

A finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A Finding of Inapplicability of Inflation Impact Statement requirements has also been made in accordance with HUD procedures. A copy of these findings will be available for public inspection during regular business hours at the above address.

Accordingly, Title 24 is amended by adding a new Part 881, Subpart D, Demonstration Rehabilitation Program, to read as follows:

Subpart D—Demonstration Rehabilitation Program

- Sec.
- 881.401 Applicability and scope.
 - 881.402 Criteria for eligibility and preferences for selection.
 - 881.403 Contents and submission of applications.
 - 881.404 HUD review and selection of applications.
 - 881.405 Prequalification of developers.
 - 881.406 Review and approval of requests for prequalification.
 - 881.407 Other provisions of Part 881.

Subpart D—Demonstration Rehabilitation Program

§ 881.401 Applicability and scope.

(a) This subpart sets forth the policies and procedures governing a demonstration program for substantial rehabilitation which will utilize supplemental allocations of contract authority to localities, selected in accordance with § 881.404, in which construction trade unions and developers have executed within a specified time a negotiated labor-management agreement incorporating differential terms and conditions for rehabilitation designed to stimulate additional substantial rehabilitation and reduce the cost of rehabilitation, which agreement should result in a special Davis-Bacon Act determination by the U.S. Department of Labor to apply to all substantial rehabilitation in the locality which is subject to the provisions of such Act.

(b) The Secretary, after considering all the pertinent factors under section 213(d) of the Housing and Community Development Act of 1974 (42 USC 5301), including such adjustments as may be necessary to assist in carrying out activities designed to meet lower income housing needs as described in approved

housing assistance plans (HAPs), will determine the amount of housing assistance to be used in accordance with this subpart.

(c) The number of additional units for which assistance will be provided pursuant to any application selected in accordance with § 881.404 shall not exceed the number of units otherwise scheduled by HUD and/or a Housing Finance and Development Agency for development under Subpart B of this Part, 24 CFR Part 883, or other Federal, State or local assisted housing rehabilitation programs. This restriction may be waived by HUD if the request for additional units exceeds the total amount of Section 8 funds available to the locality for new construction and substantial rehabilitation in the same fiscal year and HUD determines that the purposes of the demonstration program will be served by providing bonus units in excess of the locality's total new construction/substantial rehabilitation fair share allocation.

(d) HUD shall announce through a notice in the FEDERAL REGISTER: (1) the amount of housing assistance to be made available for the demonstration program during any fiscal year; (2) any additional or special criteria which may be established for this demonstration program; and (3) the closing date and address for submission of applications from localities to participate in the demonstration program.

(e) In order to be selected for the demonstration program, a locality must submit an application in accordance with § 881.403 and be selected in accordance with § 881.404.

§ 881.402 Criteria for eligibility and preferences for selection.

(a) In addition to any special criteria or preferences included in the Notice published pursuant to § 881.401(d), an application shall include evidence that the construction trade unions and rehabilitation developers in the locality have executed, or are willing to execute by the deadline date stated in the Notice, a negotiated labor-management agreement based upon the Statement of Principles and Objectives for Housing Rehabilitation and the Prototype Agreement, which will substantially reduce the cost of rehabilitation. Where such agreement has not been executed, the application shall include a copy of the proposed agreement, if any, or a statement as to the principal elements of the agreement to be negotiated, including revisions in wage rates, classifications, and/or work practices and a statement of the estimated cost savings to be achieved. Preference will be given to applications which contain an executed agreement or evidence that negotiations are substantially complete and to applications which contain or propose agreements which have the greatest potential for reducing the overall cost and promoting the economy of rehabilitation.

(b) An application shall include evidence that the number of units for which housing assistance is requested under this demonstration program plus the

number of units to be assisted under other substantial rehabilitation programs included in the approved HAP for the locality does not exceed the annual housing assistance goal included in the HAP; Provided, however, that, so long as the housing assistance needs are not exceeded, the locality may provide evidence that an amendment to the HAP has been initiated to increase the annual goals for substantial rehabilitation or the chief executive officer may provide a written statement as set forth in the second sentence of 24 CFR 891.204(a)(2).

(c) An application shall identify a target neighborhood(s) for the use of the demonstration program and indicate that (1) such neighborhood(s) is within the general locations specified for assisted housing in the approved HAP for the locality or is otherwise acceptable to the unit of general local government, (2) the number of units in the target neighborhood(s) which are suitable for rehabilitation under this subpart and which meet the site and neighborhood standards set forth in § 881.112 equals or exceeds the number of units for which assistance under this subpart is requested, and (3) the number of additional units in either the target neighborhood(s) or within the general locations specified for assisted housing in the approved HAP or in locations otherwise acceptable to the unit of general local government which are suitable for rehabilitation and which meet the site and neighborhood standards set forth in § 881.112 equals or exceeds the number of units scheduled for rehabilitation by HUD or an HFDA with Section 8 assistance other than under this subpart. Preference will be given to applications which evidence that the housing assistance requested under this subpart, plus other housing assistance which may be made available and such services or support as may be indicated pursuant to paragraph (d) of this section, will result in revitalization and improved long-term viability of the target neighborhood(s).

(d) The application shall identify the household types for which assistance is requested under this subpart and demonstrate that such assistance is consistent with the provisions of 24 CFR 570.303(c)(3)(iv).

(e) An application shall identify services or support, including the commitment of Community Development Block Grant funds, which are or will be provided to the target neighborhood(s) and a schedule for provision of such services or support. Support provided may include such items as the provision of site improvements, improved public services or facilities and/or assistance in the development or financing of the rehabilitation activities in the target neighborhood(s). Preference will be given to those applications which provide greater services and support to the target neighborhood(s) by the estimated completion date of the rehabilitation.

(f) An application shall identify any State Housing Finance and Development Agencies capable of financing Section 8 Substantial Rehabilitation projects in

the locality. Among applications which identify such agencies, preference will be given to applications which include a written commitment from the agency to finance a specified number of rehabilitation units in the target neighborhood(s).

§ 881.403 Contents and submission of applications.

(a) Each application for participation in the demonstration program shall consist of (1) A letter of transmittal, signed by the chief executive officer of the unit of general local government submitting the application; (2) A statement of the number of units requested by type (detached, semi-detached/row, walk-up, elevator) and the average size (number of bedrooms) for each type; (3) A narrative statement evidencing compliance with each of the criteria listed in § 881.402 and the requirements in § 881.401(c); (4) A narrative statement, as appropriate, evidencing entitlement to any of the preferences listed in § 881.402; (5) Supporting maps, including a map showing the location of the target neighborhood(s) and indicating the location and number of units of assisted housing already in existence in the target neighborhood(s) and adjacent area, and other material as appropriate; (6) An index of all materials submitted with the application.

(b) Each application shall be submitted in the number of copies and to the address required in the Notice published pursuant to § 881.401(d) and, simultaneously, to the HUD field office(s) with jurisdiction over the locality submitting the application.

§ 881.404 HUD review and selection of applications.

(a) The applications shall be reviewed for compliance with the criteria and preferences in § 881.402. Field Office Directors and Regional Administrators shall be consulted in this evaluation.

(b) On the basis of the review conducted in accordance with paragraph (a) of this section and within the limitations contained in § 881.401, the Assistant Secretary for Housing shall determine which applications shall be approved and the amount of additional contract authority to be granted to each locality under this demonstration program.

(c) In the event that applications submitted exceed the contract authority made available for the demonstration program, priority shall be given to those applications which best meet the preference criteria set forth in § 881.402.

(d) The amount of contract authority for each of the selected localities shall be determined by the Assistant Secretary for Housing after considering the following factors:

(1) The number of approved applications and amounts requested therein.

(2) The amount of contract authority available for the demonstration program.

(3) The overall quality of each application with respect to each of the criteria and preferences in § 881.402.

(e) (1) After the total amount of contract authority for each of the selected

localities has been determined, the localities shall be notified of their selection or rejection. Selected localities shall also be advised of the contract authority which is to be made available to them under the demonstration program and the approximate number of units this contract authority is expected to assist.

(2) If the negotiated labor-management agreement referenced in § 881.401 (a) has not yet been executed, the selected locality shall also be advised that failure of the construction trade unions and developers to execute such agreement by the date specified in the Notice published pursuant to § 881.401(d) may result in withdrawal of approval of the locality for participation in the demonstration program. Similarly, HUD will withdraw approval of localities where the cost-savings indicated in applications and relied upon by HUD in selecting the locality under this section will not be achieved because of differences between the labor-management agreement as described in the application and the agreement as executed.

(f) Simultaneously with issuance of notifications to the selected localities, the appropriate allocations will be distributed by the Assistant Secretary for Housing to those Field Office Directors with jurisdictions over the selected localities.

(g) If the HFDA commitment referenced in § 881.402(f) has been made, the allocation made pursuant to § 881.404(f) may include a set-aside of units and corresponding contract authority for the HFDA. The HFDA shall follow the procedures set forth in Part 883, except that the project sites must be within the target neighborhood(s) designated by the locality and the time schedule established for the demonstration program must be met.

§ 881.405 Prequalification of developers.

(a) All rehabilitation developers including PHA's who desire to participate in the demonstration program must be prequalified by the appropriate field office. Participation shall not be limited to signatories to the agreement referenced in § 881.401(a).

(b) Within 5 working days of receipt of contract authority allocated for use under the demonstration program, the field office shall publish a notice in a newspaper(s) of general circulation which will invite rehabilitation developers to submit requests for prequalification to the field office for participation in the demonstration program. As promptly as possible, the field office shall also notify minority media, business concerns included in HUD's registry of Section 3 businesses for the applicable political jurisdictions, minority organizations involved in housing and community development, and fair housing groups.

The notice shall state:

(1) The amount of contract authority available for the demonstration program and the approximate number of units expected to be assisted;

(2) That prequalification is a prerequisite to submission of proposals for substantial rehabilitation under the demonstration program;

(3) That up to a specified deadline date (generally not to exceed 20 days from the date of publication of the Notice) and time the field office will accept requests for prequalification; and

(4) That the request must include:

(i) A statement of the previous participation in HUD programs of the rehabilitation developer, and of the contractor and architect, if known, and other identified participants in development, on the prescribed HUD form (which can be obtained from the field office);

(ii) A statement of the qualifications and experience in rehabilitation of the rehabilitation developer, and of the contractor and architect, if known, and other identified participants in development, including the number of units rehabilitated in each of the last 5 years.

(iii) The number of units for which the rehabilitation developer desires to be prequalified, and the financing method anticipated to be used; if HFDA financing is anticipated, evidence of interest by the appropriate HFDA shall be included; and

(iv) Any additional information which the rehabilitation developer considers would assist the field office in assessing the qualifications and experience of the developer, rehabilitator, and other identified participants in development.

(c) Applications for prequalification which are received after the deadline date and time shall be returned without review unless notification of an extension of the deadline is published.

§ 881.406 Review and approval of requests for prequalification.

(a) Upon receipt of a request for prequalification, the field office shall evaluate the past experience of the rehabilitation developer, contractor and architect, if known, and any other identified participants in development to determine whether the developer has adequate capacity to complete rehabilitation of the number of units for which prequalification was requested under the demonstration program within the time constraints (see § 881.407) and that the developer is otherwise qualified for approval for participation in federally-assisted projects. In those cases where the HFDA commitment referenced in § 881.402(f) has been made, the field office shall obtain recommendations, if any, from the appropriate HFDA.

(b) Based on the evaluation, the field office shall determine the maximum number of units for which the rehabilitation developer shall be prequalified. This number may be less than but shall not exceed the number of units for which prequalification was requested.

(c) When review and evaluation of all requests for pre-qualification have been completed, all rehabilitation developers who have been determined acceptable shall be so notified simultaneously. Rehabilitation developers who have not been determined acceptable shall be notified at the same time. Where the request

indicates that HFDA financing is anticipated, a copy of the notification of pre-qualification shall be sent to the appropriate HFDA. Each notification shall state:

(1) The number of units for which the rehabilitation developer has been pre-qualified;

(2) That the pre-qualification is subject to final clearance of previous participation documentation;

(3) That Preliminary Proposals must be received within 35 days of notification of pre-qualification and may not exceed the number of units for which pre-qualification is being granted.

(d) The field office shall prepare and include with the notification in paragraph (c) of this section, a Rehabilitation Program Packet, prepared in accordance with § 881.204 and appropriately modified.

§ 881.407 Other provisions of Part 881.

All Preliminary Proposals received under this subpart shall be subject to all the provisions of Subpart A of this Part and the provisions of Subpart B, starting with § 881.205, or as appropriate, the applicable provisions of Subpart A and all the provisions of Subparts B and C of 24 CFR Part 883; Provided, however, that a maximum of 120 days will be permitted between submission of Preliminary Proposal and Final Proposal approval. Failure to meet this schedule may result in rejection of a proposal, selection of an alternate proposal, or recapture of contract authority made available under the demonstration program.

(Sec. 7(d)), Department of HUD Act, (42 U.S.C. 3535(d)); Sec. 5(b) of the United States Housing Act of 1937, (42 U.S.C. 1437c(b)); Sec. 8 of the United States Housing Act of 1937, (42 U.S.C. 1437f).

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

Effective date. These amendments are effective on November 9, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing-
Federal Housing Commissioner.

[FR Doc.76-32993 Filed 11-8-76;8:45 am]

**Title 43—Public Lands: Interior
CHAPTER II—BUREAU OF LAND
MANAGEMENT**

[Circular No. 2410]

**PART 2650—ALASKA NATIVE
SELECTIONS**

This final rulemaking makes a technical change in the requirement for publication of notices required in connection with miscellaneous selections made pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601). The existing regulations require that the notices be published by the Department of the Interior. This amendment, while not changing the requirement that the notices be published, would simplify the process by making a bureau of the Department responsible for carrying out actions required on filed applications to

publish the notices. This technical change will also speed action on the pending applications.

Since these technical changes involve only the internal operations of the Department and have no effect on the public, there is no need to publish them as proposed rules requiring public comment. Therefore, 43 CFR Part 2650 is amended as set forth below:

§ 2653.5 [Amended]

(1) Paragraph (h) of § 2653.5 is amended by deleting the word "Department" and by substituting in lieu thereof the words "Bureau of Land Management."

§ 2653.6 [Amended]

(2) Paragraph (a)(3) of § 2653.6 is amended by deleting the word "Department" and by substituting in lieu thereof the words "Bureau of Indian Affairs."

§ 2653.9 [Amended]

(3) Paragraph (d) of § 2653.9 is amended by deleting the word "Department" and by substituting in lieu thereof the words "Bureau of Land Management."

This amendment becomes effective as November 10, 1976.

Signed on November 3, 1976.

RONALD G. COLEMAN,
Assistant Secretary of
the Interior.

[FR Doc.76-32896 Filed 11-8-76;8:45 am]

Title 49—Transportation

**SUBTITLE A—OFFICE OF THE SECRETARY
OF TRANSPORTATION**

[OST Docket No. 1; Amdt. 1-124]

**PART 1—ORGANIZATION AND
DELEGATION OF POWERS AND DUTIES**

**Delegation to Assistant Secretary for
Administration**

The purpose of this amendment is to formalize the delegation to the Assistant Secretary for Administration of authority to issue regulations establishing, amending, or revoking Department of Transportation Procurement Regulations (41 CFR Chapter 12), subject to the Secretarial reservation of authority over contract appeal regulations (49 CFR 1.44 (g)).

Since this amendment relates to Departmental management, procedures, and practices, notice and public procedure thereon are unnecessary and it may be effective in fewer than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, § 1.59 of Part 1 of title 49, Code of Federal Regulations, is amended by adding a new paragraph (a) (4) to read as follows:

§ 1.59 Delegations to Assistant Secretary for Administration.

* * * * *

(a) Procurement.

* * * * *

(4) Issue regulations establishing, amending, or revoking Department of Transportation Procurement Regulations

(41 CFR Chapter 12), subject to § 1.44 (g) of this title.

Effective date: This amendment is effective November 2, 1976.

(Sec. 9(e), Department of Transportation Act, 49 U.S.C. 1657(e).)

Issued in Washington, D.C., on November 2, 1976.

WILLIAM T. COLEMAN, JR.,
Secretary of Transportation.

[FR Doc.76-32892 Filed 11-8-76;8:45 am]

Title 50—Wildlife and Fisheries

**CHAPTER I—UNITED STATES FISH AND
WILDLIFE SERVICE, DEPARTMENT OF
THE INTERIOR**

PART 26—PUBLIC ENTRY AND USE

**Carleton Pond Waterfowl Production Area,
Maine**

The following special regulations are issued and are effective during the period January 1, 1977 through December 31, 1977.

**§ 26.34 Special regulations concerning
public access, use and recreation for
individual wildlife refuge areas.**

MAINE

**CARLETON POND WATERFOWL PRODUCTION
AREA**

Entry by foot is permitted for the purpose of sightseeing, nature observation, photography, and hiking during daylight hours.

The area, comprising approximately 1,068 acres, is delineated on maps available from the Refuge Manager, Moosehorn National Wildlife Refuge, Box X, Calais, Maine 04619, or from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1977.

Dated: November 2, 1976.

HOWARD N. LARSON,
Regional Director,
U.S. Fish and Wildlife Service.

[FR Doc.76-32812 Filed 11-8-76;8:45 am]

PART 26—PUBLIC ENTRY AND USE

Iroquois National Wildlife Refuge, New York

The following special regulations are issued and are effective during the period January 1, 1977 through December 31, 1977.

**§ 26.34 Special regulation concerning
access, use and recreation for individual
wildlife refuge areas.**

NEW YORK

IROQUOIS NATIONAL WILDLIFE REFUGE

Travel on foot or by motor vehicle is permitted on designated travel routes, for the purpose of nature study, photography, hiking and sight-seeing during day-

RULES AND REGULATIONS

light hours. Pets are permitted, if on a leash not over 10 feet in length.

The refuge area, comprising 10,818 acres, is delineated on maps available from the Refuge Manager, Iroquois National Wildlife Refuge, RFD No. 1, Basom, New York 14013 and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1977.

Dated: November 2, 1976.

HOWARD N. LARSON,
Regional Director,
U.S. Fish and Wildlife Service.

[FR Doc.76-32814 Filed 11-8-76;8:45 am]

PART 26—PUBLIC ENTRY AND USE

Moosehorn National Wildlife Refuge, Maine

The following special regulations are issued and are effective during the period January 1, 1977 through December 31, 1977.

§ 26.34 Special regulations concerning public access, use and recreation for individual wildlife refuge areas.

MAINE

MOOSEHORN NATIONAL WILDLIFE REFUGE

Entry on foot or by motor vehicle on designated travel routes is permitted for the purpose of nature study, photography, hiking, and sight-seeing during daylight hours. Pets are allowed if on a leash not over 10 feet in length.

The use of snowmobiles is permitted on the Baring and Edmunds Units subject to the following special conditions:

(1) Use is restricted to the periods January 1, 1977 through April 15, 1977 and from December 1, 1977 through December 31, 1977.

(2) Use shall be in accordance with all applicable State laws and regulations governing snowmobiles.

(3) Use is permitted 24 hours a day and is limited to designated roads.

The refuge area, comprising 22,666 acres, is delineated on maps available from the Refuge Manager, Moosehorn National Wildlife Refuge, Box X, Calais, Maine 04619, or from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1977.

Dated: November 2, 1976.

HOWARD N. LARSON,
Regional Director,
U.S. Fish and Wildlife Service.

[FR Doc.76-32813 Filed 11-8-76;8:45 am]

PART 26—PUBLIC ENTRY

Salt Plains National Wildlife Refuge, Oklahoma

The following special regulation is issued and is effective on November 9, 1976.

§ 26.34 Special regulations; public access, use and recreation; for individual wildlife refuge areas.

OKLAHOMA

SALT PLAINS NATIONAL WILDLIFE REFUGE

Retrieving zones of approximately 100 yards in width are established on the Salt Plains National Wildlife Refuge, Oklahoma, immediately inside the exterior refuge boundary at certain locations as designated by signs. These retrieving zones are delineated on maps available at refuge headquarters, Jet, Oklahoma, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

A hunter may enter these retrieving zones to retrieve dead or crippled waterfowl which he has legally killed or crippled by hunting outside the refuge boundary but which has fallen inside the exterior boundary of the refuge and within the designated retrieving zones.

The use of dogs and the possession of firearms or weapons inside the exterior boundary of the refuge and in the authorized retrieving zones is prohibited.

The provisions of this special regulation supplement the regulations which govern public access, use, and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through January 8, 1977.

Dated: November 1, 1976.

JERRY L. STEGMAN,
Deputy Regional Director,
Albuquerque, New Mexico.

[FR Doc.76-32821 Filed 11-8-76;8:45 am]

PART 33—SPORT FISHING

Missisquoi National Wildlife Refuge, Vermont

The following special regulations are issued and are effective during the period January 1, 1977 through December 31, 1977.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

VERMONT

MISSISQUOI NATIONAL WILDLIFE REFUGE

Sport fishing is permitted in Lake Champlain and the Missisquoi River from the Missisquoi National Wildlife Refuge, Vermont. The refuge is delineated on a map available at Refuge Headquarters, Swanton, Vermont and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158. Sport fishing shall be in accordance with all applicable state regulations, subject to the following special conditions:

(1) Taking of fish by use of firearms is prohibited.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

Dated: November 2, 1976.

HOWARD N. LARSON,
Regional Director,
U.S. Fish and Wildlife Service.

[FR Doc.76-32815 Filed 11-8-76;8:45 am]

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 215—PRIBILOF ISLANDS

Revision of Regulations

On August 30, 1976, notice was published in the FEDERAL REGISTER (41 FR 36507) of proposed rulemaking under the Fur Seal Act of 1966 (16 U.S.C. 1151-1187), to review 50 CFR Part 215, which implements certain provisions of the Act.

The proposed revision of Part 215 provided for three subparts. Subpart A sets forth the purpose of the regulations, several definitions, and the penalties for violating the Act and regulations. Subpart B sets forth the procedures for authorizing the possession and transportation of fur seals for purposes of education or exhibition and the means by which fur seals may be acquired for this purpose. Subpart C provides for the administration of the Pribilof Islands. Interested parties were given the opportunity to submit, not later than September 29, 1976, comments or views regarding the proposed regulations.

No unfavorable comments have been received regarding the proposed revision of 50 CFR Part 215. It has been suggested that the definition "public display" which appears in § 215.2 be more precisely defined, relative to the display of living fur seals. This suggestion has been adopted, by altering the heading of Subpart B to refer to the public display of living fur seals.

Additionally, the term "or importation" has been deleted from § 215.13(a), since importation of fur seals is not within the scope of these regulations. Accordingly, 50 CFR Part 215 is revised as set forth below.

Effective date: These regulations shall be effective on December 7, 1976.

Dated: November 3, 1976.

JACK W. GEHRINGER,
Deputy Director,
National Marine Fisheries Service.

Subpart A—General

Sec.
215.1 Purpose and scope.
215.2 Definitions.
215.3 Penalties.

Subpart B—Public Display of Fur Seals

215.11 Taking of fur seals for public display.
215.12 Public display permits.

- 215.13 Procedures for the issuance, modification, suspension or revocation of permits.
215.14 Possession of permits.

Subpart C—Administration of Pribilof Islands

- 215.21 Visits to fur seal rookeries.
215.22 Dogs prohibited.
215.23 Importation of birds or mammals.
215.24 Reindeer and foxes.
215.25 Walrus and Otter Islands.
215.26 Local regulations.

AUTHORITY: Pub. L. 89-702, 80 Stat. 1091 (16 U.S.C. 1151-1187); Reorganization Plan No. 4 of 1970, 84 Stat. 2090.

Subpart A—General

§ 215.1 Purpose and scope.

The purpose of these regulations is to implement the provisions of the Fur Seal Act of 1966. The provisions of these regulations apply to the administration of the Pribilof Islands, the take of fur seals, and the procedures for issuing, amending or rescinding display permits for fur seals.

§ 215.2 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part 215:

(a) Act means the Fur Seal Act of 1966, 80 Stat. 1091, 16 U.S.C. 1151-1187, Pub. L. 89-702.

(b) Convention means the Interim Convention on Conservation of North Pacific Fur Seals, signed at Washington on February 9, 1957, as amended by the Protocol signed at Washington on October 8, 1963, and as extended by Agreement of September 3, 1969. T.I.A.S. 3948, 5558, 6774; 8 U.S.T. 2283; 15 U.S.T. 316; 20 U.S.T. 2992.

(c) Director means the Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) Fur seal means Northern fur seal scientifically known as *Callorhinus ursinus*.

(e) Public display means, with respect to fur seals, display, whether or not for profit, for the purposes of education or exhibition.

§ 215.3 Penalties.

Any person who violates the provisions of Title I of the Act which relate to the protection of fur seals, or regulations thereunder as set forth in Subpart B of this part, shall be fined not more than \$2000 or be imprisoned not more than one year, or both. Any person who violates or fails to comply with the regulations relating to the use and management of the Pribilof Islands or to the conservation and protection of the fur seals or wildlife or other natural resources located thereon, as set forth in Subpart C of this part, shall be fined not more than \$500 or be imprisoned not more than six months, or both.

Subpart B—Public Display of Living Fur Seals

§ 215.11 Taking of fur seals for public display.

(a) Fur seals will be made available for public display only to holders of public display permits issued pursuant to § 215.13. All takings of fur seals will be by personnel of the National Marine

Fisheries Service. The fur seals will thereafter be made available to a permit holder at a place and under such conditions as determined by the Director.

(b) A fee of \$600 per animal will be charged for the services provided by the National Marine Fisheries Service in capturing, caring for and holding animals taken for public display, which shall include the fee for permit issuance. The fee is based upon a reasonable approximation of the costs involved in labor, supervision, administration, and overhead. The Director may change the amount of the fee at any time he determines that a different fee is reasonable. A change in fee may be accomplished by publication in the FEDERAL REGISTER of the new amount, without the necessity of amending these regulations.

§ 215.12 Public display permits.

(a) The Director may issue permits authorizing the possession and transportation of fur seals for public display. Any person desiring to obtain such a permit may make application to the Director. The sufficiency of the application shall be determined by the Director and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The information requested will be used as the basis for determining whether an application is complete and whether a public display permit should be issued. An original and two copies of the complete application shall be submitted to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235. Assistance in preparing the application may be obtained by writing the above address to the attention of the Marine Mammals and Endangered Species Division, or by calling the Marine Mammals and Endangered Species Division, in Washington, D.C. (a/c 202/634-7529). In preparing an application for a public display permit, provide the following information:

(1) Title: Application for Public Display Permit pursuant to the Fur Seal Act of 1966;

(2) List the date of the application;

(3) If the applicant is a partnership or a corporate entity, set forth the details. If the fur seal to be displayed is to be displayed by a party in addition to the applicant, set forth the name of the party and such other information as would be required if such party were an applicant.

(4) Provide a statement on the purpose of the proposed display, including a brief description of:

(i) The need for the fur seal(s);

(ii) How they will be used.

(5) Provide a description of each animal desired, including the age, sex, and size; and a list of the desired dates of delivery.

(6) Describe the manner of transportation of fur seals including:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animals from the capture site to the display facility;

(iv) Length of time in transit for any future move or transfer of the animals that is planned;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, container, cage, cradle, or other devices used to hold the animal before and during transportation; and

(vii) Special care before and during transportation, such as salves, antibiotics and moisture.

(7) Describe the contemplated care and maintenance of any fur seal sought, including a complete description of the facilities where such animals will be maintained or displayed, including:

(i) The dimensions of the pools or other holding facilities, and the number of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the well-being of the animal(s).

(8) Provide a detailed description of the proposed display, including:

(i) A description of the manner, location and number of times per day and per week the animal(s) will be displayed;

(ii) An indication as to whether the display is for profit;

(iii) An estimate of numbers and types of people who it is estimated will benefit by such display;

(iv) A list of any educational or scientific programs connected to the contemplated display; and

(v) A description of the applicant's enterprise and its connections with any governmental, educational, medical, or other scientific entities.

(9) For the year preceding the date of this application, provide the following:

(i) A list of all marine mammals captured, transported or maintained for any purpose by or on behalf of the applicant;

(ii) The numbers of mortalities among such mammals, by species, by date and location of such mortalities;

(iii) The cause(s) of any such mortalities including when available copies of post-mortem reports; and

(iv) The steps which have been taken by the applicant to avoid or reduce such mortalities.

(10) A certification in the following language:

I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Fur Seal Act of 1966 and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001.

(11) The applicant must sign the application.

(b) Upon receipt of an application for a public display permit, the Director shall forward the application to the Marine Mammal Commission together with a request for the recommendations of the Commission and the Committee of Scientific Advisors on Marine Mammals on the permit application. In order to comply with the time limits provided in these regulations, the Director shall request that such recommendation be submitted within 30 days of receipt of the application by the Commission. If the Commission or the Committee, as the case may be, does not respond within 30 days from the receipt of such application by the Commission, the Director shall advise the Commission in writing that failure to respond within 45 days from original receipt of the application (or such longer time as the Director may establish) shall be considered as a recommendation from the Commission and the Committee that the permit be issued. The Director may also consult with any other person, institution or agency concerning the application.

(c) Permits applied for under this section shall be issued, suspended, modified or revoked pursuant to § 215.13. In determining whether to issue a public display permit, the Director shall, among other criteria, consider whether the proposed taking will be consistent with the policies and purposes of the Act: whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of and the adequacy of his facilities.

(d) Permits applied for under this section shall contain terms and conditions as the Director may deem appropriate, including:

(1) The methods of transportation, care and maintenance to be used with live marine mammals;

(2) Any requirements for reports or rights of inspection with respect to any activities carried out pursuant to the permit;

(3) The transferability or assignability of the permit; and

(4) The sale or other disposition of the fur seal and its progeny.

§ 215.13 Procedures for the issuance, modification, suspension or revocation of permits.

(a) Whenever a complete application for a permit is received by the Director, he shall, as soon as practicable, publish a notice thereof in the FEDERAL REGISTER. Such notice shall set forth a summary of the information contained in the application. Any interested party may, within 30 days after the date of publication of the notice, submit to the Director his written data or views with respect to the taking proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Director determines that a hearing would otherwise be advisable, the Director may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Director shall issue or deny issuance of the permit. Notice of the decision of the Director shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Any permit shall be subject to modification, suspension or revocation by the Director in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken and a summary of the reasons therefore;

(2) The steps, if any, which the permittee may take to demonstrate or achieve compliance with all lawful requirements;

(3) Shall advise the permittee that he is entitled to a hearing thereon, if a written request for such a hearing is received by the Director within 10 days after the date of receipt of the aforesaid notice or such other date as may be specified in the notice to the permittee. The time and place for the hearing, if requested by the permittee, shall be determined by the Director and written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of the hearing. The Director may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and others participating may submit all relevant material, comments and briefs at the hearing. A summary record shall be kept of the hearing.

(e) The Director shall make a determination regarding the proposed modification, suspension or revocation as soon as practicable after the close of the hearing or if no hearing is held as soon as practicable after the close of the 10-day period during which a hearing could have been requested. Notice of the Director's decision to modify, suspend or revoke shall be published in the FEDERAL REGISTER as soon as practicable.

(f) Any permittee shall have the opportunity to request modification of a permit. An application to modify a permit shall contain, to the extent relevant, the information requested in § 215.13. An application to modify a permit shall be processed in accordance with this section.

§ 215.14 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the permittee or his authorized representative who accompanies the transit of a fur seal for which the permit was issued.

(b) A duplicate copy of the permit must be physically attached to the container, package, enclosure, or other means of containment in which the fur seal is placed for the purpose of storage, transit, supervision or care.

Subpart C—Administration

§ 215.21 Visits to fur seal rookeries.

From June 1 to October 15 of each year, no person, except those authorized by a representative of the National Marine Fisheries Service, or accompanied by an authorized employee of the National Marine Fisheries Service, shall approach any fur seal rookery or hauling grounds nor pass beyond any posted sign forbidding passage.

§ 215.22 Dogs prohibited.

In order to prevent molestation of fur seal herds, the landing of any dogs at Pribilof Islands is prohibited.

§ 215.23 Importation of birds or mammals.

No mammals or birds, except household cats, canaries and parakeets, shall be imported to the Pribilof Islands without the permission of an authorized representative of the National Marine Fisheries Service.

§ 215.24 Reindeer and foxes.

(a) The reindeer herd on St. Paul Island is Government-owned. When it is determined that a surplus exists, hunting will be allowed to the extent of the surplus.

(b) Foxes may be hunted or trapped when prime during the months of December and January by holders of trapping licenses issued by the State of Alaska.

§ 215.25 Walrus and Otter Islands.

By Executive Order 1044, dated February 27, 1909, Walrus and Otter Islands were set aside as bird reservations. All persons are prohibited to land on these islands except those authorized by the appropriate representative of the National Marine Fisheries Service.

§ 215.26 Local regulations.

Local regulations will be published from time to time and will be brought to the attention of local residents and persons assigned to duty on the Islands by posting in public places and brought to the attention of tourists by personal notice.

[FR Doc.76-32808 Filed 11-8-76; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL ADVISORY COUNCIL ON ECONOMIC OPPORTUNITY

[1 CFR Part 405]

PRIVACY ACT OF 1974

Proposed Regulations for Implementation

The following Proposed regulations, drafted in accordance with section (f) of 5 U.S.C. 552a, the Privacy Act of 1974, are hereby offered for public comment. Interested parties should submit comments on or before December 31, 1976. Comments should be addressed to the Staff Director, National Advisory Council on Economic Opportunity, 1725 K Street, N.W., Suite 405, Washington, D.C. 20006. For the Systems of Records for the Council refer to the appropriate Part in this issue of the FEDERAL REGISTER.

Signed this 28th day of October 1976,
by

WALTER B. QUETSCH,
Staff Director.

It is proposed to add the following Part 405 to Title I, Chapter IV, of the CFR:

PART 405—PRIVACY ACT IMPLEMENTATION

- Sec.
- 405.1 Purpose and scope.
- 405.2 Definitions.
- 405.3 Procedures for requests pertaining to individual records in a record system.
- 405.4 Times, places, and requirements for the identification of the individual making a request.
- 405.5 Disclosure of requested information to the individual.
- 405.6 Request for correction or amendment to the record.
- 405.7 Agency review of request for correction or amendment of the record.
- 405.8 Appeal of an initial adverse agency determination on correction or amendment of the record.
- 405.9 Disclosure of record to a person other than the individual to whom the record pertains.
- 405.10 Fees.

AUTHORITY: 5 U.S.C. 522a; Pub. L. 93-579.

§ 405.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the National Advisory Council on Economic Opportunity (hereafter known as the Council) maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record

pertaining to him or her for the purpose of review, amendment and/or correction.

§ 405.2 Definitions.

For the purpose of these regulations—
(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item, collection or grouping of information about an individual that is maintained by the Council, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number;

(d) The term "system of records" means a group of any records under the control of the Council from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 405.3 Procedures for requests for access to individual records in a record system.

An individual shall submit a request to the Staff Director of the Council to determine if a system of records named by the individual contains a record pertaining to the individual. The individual shall submit a request to the Staff Director of the Council which states the individual's desire to review his or her record.

§ 405.4 Times, places, and requirements for the identification of the individual making a request.

An individual making a request to the Staff Director of the Council pursuant to § 405.3 of this part shall present the request at the Council offices, 1725 K Street, N.W., Washington, D.C. 20006, on any business day between the hours of 8:45 a.m. and 5:15 p.m. The individual submitting the request should present himself or herself at the Council's offices with a form of identification which will permit the Council to verify that the individual is the same individual as contained in the record requested.

§ 405.5 Access to requested information to the individual.

Upon verification of identity the Council shall disclose to the individual the information contained in the record which pertains to that individual.

§ 405.6 Request for correction or amendment to the record.

The individual should submit a request to the Staff Director of the Council which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with the provisions of § 405.4 of this Part.

§ 405.7 Agency review of request for correction or amendment to the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Staff Director of the Council will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or to amend the record in accordance with the request, the reason for the refusal, and the procedures established by the Council for the individual to request a review of that refusal.

§ 405.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the Staff Director of the Council to correct or to amend his or her record may submit a request for a review of such refusal to the Staff Director, National Advisory Council on Economic Opportunity, 1725 K Street, N.W., Washington, D.C. 20006. The Staff Director will, not later than thirty working days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Staff Director extends such thirty day period. If, after his or her review, the Staff Director also refuses to correct or to amend the record in accordance with the request the individual may file with the Council a concise statement setting forth the reasons for his or her disagreement with the refusal of the Council and may seek judicial review of the Staff Director's determination under 5 U.S.C. 552a(g)(1)(A).

§ 405.9 Disclosure of record to a person other than the individual to whom the record pertains.

The Council will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure has been listed as a "routine use" in the Council's notices of its systems of records.

§ 405.10 Fees.

If an individual requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for review of the record, in advance of receipt of the pages.

[FR Doc.76-32560 Filed 11-8-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 729]

PEANUTS

Proposed Proclamation of 1977 National Marketing Quota

The Secretary of Agriculture is required by § 358(a) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1358(a)), to proclaim, between July 1 and December 1 of each calendar year, the amount of the national marketing quota for peanuts for the crop produced in the next succeeding calendar year. The amount of such quota is the total quantity of peanuts which will make available for marketing a supply of peanuts from the crop with respect to which the quota is proclaimed equal to the average quantity of peanuts harvested for nuts during the five years immediately preceding the year in which such quota is proclaimed, adjusted for current trends and prospective demand conditions.

Section 358(a) of the act further provides that the national marketing quota for peanuts shall be converted to a national acreage allotment by dividing such quota by the normal yield per acre of peanuts for the United States determined by the Secretary on the basis of the average yield per acre of peanuts in the five years preceding the year in which the quota is proclaimed, with such adjustment as may be found necessary to correct for trends in yields and for abnormal conditions of production affecting yields.

Section 358(a) of the act also requires that the national marketing quota be a quantity of peanuts sufficient to provide a national acreage allotment of not less than 1,610,000 acres.

Section 358(c)(1) of the act (7 U.S.C. 1358(c)(1)) provides that the national acreage allotment for any year shall be apportioned among the States on the basis of their shares of the national acreage allotment for the most recent year in which such apportionment was made. Pursuant to this provision of the

Act, the national acreage allotment for the 1977 crop of peanuts will be apportioned to States on the basis of their shares of the 1976 national acreage allotment.

The subjects and issues involved in the proposed determinations are:

1. The amount of the national marketing quota.

2. The amount of the national acreage allotment.

Consideration will be given to data, views, and recommendations pertaining to the proposed determinations covered by this notice which are submitted in writing to the Director, Tobacco and Peanut Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750, South Building, U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C., Monday through Friday from 8:15 a.m. to 4:45 p.m. (7 CFR 1.27(b)). All submissions must, in order to be sure of consideration, be postmarked not later than November 29, 1976.

Signed at Washington, D.C. on: November 1, 1976.

SEELEY G. LODWICK,
Acting Administrator, ASCS.

[FR Doc.76-32881 Filed 11-8-76;8:45 am]

Agricultural Marketing Service

[7 CFR Part 987]

DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

Proposed Expenses of the California Date Administrative Committee and Rate of Assessment, for the 1976-77 Crop Year

Notice is hereby given of a proposal regarding expenses of the California Date Administrative Committee, and rate of assessment, for the 1976-77 crop year. The proposal is pursuant to §§ 987.71 and 987.72 of the marketing agreement, as amended, and Order No. 987, as amended (7 CFR Part 987). The amended marketing agreement and order regulate the handling of domestic dates produced or packed in Riverside County, California, and are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The California Date Administrative Committee has recommended, for the 1976-77 crop year, expenses totaling \$25,540 and an assessment rate of 7 cents per hundredweight on assessable dates. The assessable poundage is estimated by the Committee at 28 million pounds. When the proposed assessment rate is applied to the estimated assessable poundage, that rate provides assessment income of \$19,600. In addition to the anticipated assessment income, the Committee also has a \$16,930 operating reserve which is available for use in meeting authorized expenses. Hence, sufficient funds will be available to cover the proposed expenses.

Consideration will be given to any written data, views, or arguments pertaining to the proposal which are received by the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than November 24, 1976. All written submissions made pursuant to this notice should be in quadruplicate and will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal is as follows:

§ 987.321 Expenses of the California Date Administrative Committee and rate of assessment for the 1976-77 crop year.

(a) *Expenses.* Expenses in the amount of \$25,540 are reasonable and likely to be incurred by the California Date Administrative Committee during the 1976-77 crop year beginning October 1, 1976, for its maintenance and functioning, and for such other purposes as the Secretary may, pursuant to the applicable provisions of this part, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for that crop year which each handler is required, pursuant to § 987.72, to pay to the California Date Administrative Committee as his pro rata share of the expenses is fixed at 7 cents per hundredweight on all assessable dates. Assessable dates are dates which the handler has certified during the crop year as meeting the requirements for marketable dates, including the eligible portion of any field-run dates certified and set aside or disposed of pursuant to § 987.45(f).

Dated: November 3, 1976.

CHARLES R. BRADER,
Deputy Director,
Fruit and Vegetable Division.

[FR Doc.76-32879 Filed 11-8-76;8:45 am]

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Parts 330, 331]

CLARIFICATION AND DEFINITION OF DEPOSIT INSURANCE COVERAGE; INSURANCE OF TRUST FUNDS

Proposed Rules Governing Deposit Insurance Coverage of Accounts Held by Investment Companies

Notice is hereby given that the Board of Directors of the Federal Deposit Insurance Corporation (the "Board") proposes to amend Parts 330 and 331 of Title 12 of the Code of Federal Regulations (12 CFR Parts 330 and 331) as set forth below.

Section 330.5 presently provides in part that deposit accounts of a corporation or partnership engaged in any independent activity shall be insured up to \$40,000 in the aggregate.¹ The proposed amend-

¹ The term "independent activity" is defined in 12 CFR § 330.7 to mean "any activity other than one directed solely at increasing insurance coverage."

ment would treat as a corporation for deposit insurance purposes any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to Section 8 of the Investment Company Act of 1940. Such treatment would extend to any business enterprise which, because of its public "ownership" and investment objectives, is subject to the Investment Company Act of 1940.

It has been recognized that certain trusts, commonly known as "business trusts," so closely resemble corporations that they may in essence be viewed as de facto corporations. Such trusts are generally characterized by the fact that the trust corpus consists of funds or other property originally contributed by the beneficiaries themselves for the purpose of making a profit through the conduct of a business. In this respect, the beneficiaries are in fact closely analogous to shareholders in a corporation. Where such trusts or other business entities are engaged in the business of soliciting funds from the public for investment purposes, they are, with certain exceptions, subject to the Investment Company Act of 1940. Heretofore, where such funds have been invested in bank certificates of deposit, there has existed some confusion as to whether the deposits are insured according to each individual investor's beneficial interest in the trust or, alternatively, according to the aggregate deposits held by the trust in each insured bank. The Board seeks to relieve that confusion by announcing its intention to determine the extent of federal deposit insurance of accounts held by such investment companies by application of the same rules which govern the insurance of accounts held by corporations.

The amendment is not intended to, and would not, affect certain kinds of trusts the accounts of which have traditionally been afforded deposit insurance on the basis of the individual beneficial interests therein. Such trusts would not fall within the coverage of the amendment because they are not subject to the registration requirements of the Investment Company Act of 1940. Such excepted trusts include:

1. Any issuer whose outstanding securities are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities.

2. Any common trust or similar fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian.

3. Any company (including any trust) organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

4. Any employees' stock bonus, pension, or profit-sharing trust which meets

the requirements for qualification under section 401 of the Internal Revenue Code of 1954, or any collective trust fund maintained by a bank consisting solely of assets of such trusts.

In conjunction with the proposed amendment to § 330.5, it is also proposed that § 331.1 be amended to ensure that a registered investment company could not avoid application of proposed § 330.5 to its deposits simply by selecting an insured bank to serve as trustee of its funds. Where an insured bank, acting in a fiduciary capacity, holds or deposits trust funds, either in the fiduciary bank or in another insured bank, section 7(1) of the Federal Deposit Insurance Act mandates that such funds shall be insured according to the "trust estates" represented by such trust funds. In the past, the term "trust estate" has often been equated with "trust interest," thereby resulting in multiple deposit insurance coverage being provided on the basis of the separate beneficial interests of the individual trust beneficiaries. Pursuant to its authority to define the extent of deposit insurance coverage, the Corporation proposes to amend § 331.1 of Part 331 as set forth below to make it clear that multiple deposits insurance coverage will not result where trust funds of a registered investment company are held or deposited by a fiduciary bank.

Interested persons are invited to submit written data, views or arguments regarding the proposed amendments to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429, no later than January 14, 1977.

(Secs. 3 and 9 Federal Deposit Insurance Act (sec. 2[3], Pub. L. 797, 64 Stat. 873, as amended (12 U.S.C. § 1813); sec. 2[9], Pub. L. 797, 64 Stat. 881 (12 U.S.C. § 1819)).

In consideration of the foregoing, it is proposed that 12 CFR § 330.5 be amended by designating the matter currently contained in that section as paragraph (a), and by adding a new paragraph (b), which reads as follows:

§ 330.5 Accounts held by a corporation or partnership.

(b) Notwithstanding any other provision of this Part 330, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to Section 8 of the Investment Company Act of 1940 shall be deemed to be a corporation for purposes of determining deposit insurance coverage.

It is further proposed, in conjunction with the foregoing proposed amendment to 12 CFR § 330.5, that 12 CFR Part 331 be amended by adding to § 331.1 thereof a new paragraph (e), as follows:

§ 331.1 Claim by fiduciary bank for insured deposits of trust estates.

(e) Claims for insured deposits of a trust classified as a corporation under § 330.5(b). With respect to any claim for insured deposits made by a fiduciary bank which holds or deposits trust funds

belonging to a trust which is classified as a corporation under § 330.5(b) of this chapter, beneficial ownership of such deposits shall be attributed to such trust, and not to the individual beneficiaries thereof, for the purposes of section 7(1) of the Federal Deposit Insurance Act.

By order of the Board of Directors, dated November 3, 1976.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[FR Doc.76-32850 Filed 11-8-76; 8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 230, 239, 240 and 249]

[Release Nos. 33-5758; 34-12946; 35-19741; IC-9505; File No. S7-658]

DISCLOSURE OF MANAGEMENT BACKGROUND: UNIFORM REPORTING REQUIREMENTS

Amendments to Forms and Schedules

The Securities and Exchange Commission today proposed for comment various amendments to registration forms under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq.) and to registration and reporting forms and proxy schedules under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. 94-29 (June 4, 1975)). If adopted, these proposals would require more meaningful disclosure to investors regarding the backgrounds of the management of publicly held companies. In addition, the Commission has requested comments on the need for and possible format of additional disclosure requirements relating to the background, qualifications, remuneration and transactions of management.

At the same time, the Commission is taking this opportunity to propose certain other amendments which are intended to provide increased uniformity among various disclosure forms. If adopted, these amendments generally would require the same disclosure in proxy statements concerning the background of directors and executive officers as will be required in annual reports on Form 10-K (17 CFR 249.310) and would conform and clarify the language of the items of various forms requiring disclosure of pending legal proceedings. The Commission believes that adoption of these more uniform reporting requirements, together with a reduction in the period covered by the disclosure and the instruction permitting certain background information to be omitted where not material, will serve to reduce burdens of compliance on registrants. It is anticipated that such reduction would balance any additional cost involved in compliance with the improved management background reporting requirements.

PRELIMINARY STATEMENT

DISCLOSURE CONCERNING DIRECTORS AND EXECUTIVE OFFICERS

As a first step toward improving management disclosure, the Commission is proposing to amend certain of its present requirements relating to disclosure about the identity and background of corporate officials and disclosure of events which the Commission believes is material to an investor's evaluation of the ability and integrity of directors or executive officers.

In connection with information presently required in proxy material, annual reports and various registration forms concerning the identity and background of directors, the proposed amendments would, if adopted, also require disclosure of all directorships held by each director of the issuer in any issuers with a class of securities registered pursuant to section 12 of the Exchange Act or subject to the requirements of section 15(d) of that Act or any company registered as an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a et seq.), and disclosure of all memberships held by each director on any committees of the issuer's board of directors. This disclosure is intended to further inform investors about the qualifications and affiliations of directors who serve public companies.

To provide more comprehensive information concerning remuneration received by certain officers and directors, the proposals would expand certain disclosure items by requiring presentation of all direct remuneration paid by the registrant and its affiliates. Since the present requirements generally call for remuneration paid only by the issuer and its subsidiaries, the proposed amendments would provide more complete data concerning the remuneration paid certain individuals by a group of affiliated entities.

In addition, the proposals would amend the items in various forms relating to material events in the background of directors and executive officers to require disclosure of (a) injunctions prohibiting such persons from engaging in any type of business practice; (b) injunctions and consent decrees prohibiting future violations of Federal or state securities laws; and (c) certain civil actions involving violations of such laws.

Although the various items requiring disclosure of material events in the background of directors and executive officers currently require a description of certain events which have occurred with the past ten years, the proposed amendments to these items would reduce the time period to five years. The Commission believes that a five-year presentation of material events in most instances would provide adequate information necessary for an investor's evaluation of the quality and integrity of management and at the same time would reduce the burdens upon registrants in reporting such information. It should be noted, however, that the five-year period is a guide to disclosure and that events occurring

outside this period may be material and should be disclosed.

Furthermore, the proposed amendments to the items requiring disclosure of the identity and background of directors and executive officers also are designed to conform the disclosure requirements in applicable forms under the Securities Act and the Exchange Act. At the present time, the items of certain of the affected forms require substantially similar background information with only minor variations in wording and format. On the other hand, the existing requirements of certain other forms are less extensive, particularly as to disclosure of material events in the background of corporate officials. Therefore, the proposed amendments, if adopted, would require identical disclosure concerning management background in all of the forms being affected.

CONFORMATION OF DISCLOSURE REQUIREMENTS

As a part of the Commission's continuing effort to integrate the disclosure requirements of the Securities Act and Exchange Act,¹ the Commission is also proposing certain amendments to eliminate differences among various registration and reporting forms in the items requiring disclosure of pending legal proceedings and to reconcile proxy statement and annual report disclosure relating to corporate officials and other persons.

The amendments to the items requiring disclosure of pending legal proceedings mainly would clarify and conform the language presently existing in applicable forms. The Commission is of the opinion that uniform disclosure should be provided with respect to material pending legal proceedings, regardless of which form is being used. The Division of Corporation Finance has made an effort, through the comment procedures, to obtain substantially similar information concerning material pending legal proceedings in all appropriate forms filed with the Commission. The proposed amendments, if adopted, should, therefore, avoid the need for amendment in response to staff comments in this regard.

As noted above under "Disclosure Concerning Directors and Executive Officers," many of the proposed revisions would conform the items in various forms relating to the identity and background of directors and executive officers. If adopted, the proposals would also conform certain disclosure requirements of Schedule 14A with the disclosure requirements of Form 10-K and other forms as they relate to the identity and background of directors and executive officers and remuneration of management.

General Instruction H(a) to Form 10-K states that the information called for by the items in Part II (Items 11-15) of that form:

¹ See, e.g., Securities Act Release Nos. 4274 (July 26, 1972) (37 FR 16005), 5395 (June 1, 1973) (38 FR 17202), and 5728 (July 26, 1976) (41 FR 32539).

May be omitted from the report by any registrant which, since the close of the fiscal year, has filed with the Commission a definitive proxy statement pursuant to Regulation 14A, or a definitive information statement pursuant to Regulation 14C, which involved the election of directors, or which files such proxy or information statement not later than 120 days after the close of the fiscal year.

Generally, the theory underlying Instruction H(a) is that since certain information will be provided to shareholders through the distribution of proxy material within a certain period of time, such information need not also be included in the Form 10-K filed with the Commission. However, issuers electing to substitute a definitive proxy statement or definitive information statement for Part II of Form 10-K are not required presently to disclose to their security holders all of the information which is required to be included in Part II. In particular, Item 6 of Schedule 14A, which calls for disclosure regarding nominees and directors whenever action is to be taken with respect to the election of directors, omits certain material information concerning the identity and background of directors and executive officers that is required by Item 12 of Form 10-K or would be required by that item if the amendments proposed herein are adopted.

In addition, Item 7 of Schedule 14A, which calls for disclosure regarding remuneration and other transactions with management and others, also omits certain material information concerning payments to officers and directors and certain pending legal proceedings which is required in other forms or will be required if all of the proposed amendments are adopted. It is intended that the proposals would result in such presently omitted disclosure being included in proxy statements and information statements prepared under the Commission's proxy rules.

Proxy statements and information statements, along with annual reports to shareholders, are among the most widely-read disclosure documents, and potentially the best-suited for communicating information on specific issues in an informative, readable and understandable form to security holders. In addition, proxy statements also have the unique function of presenting information material to matters being considered at shareholder meetings—especially election of directors. Annual reports on Form 10-K, on the other hand, are not usually distributed to shareholders, unless pursuant to a specific request in accordance with Rules 14a-3 (17 CFR 240.14a-3) and 14c-3 (17 CFR 240.14c-3) under the Exchange Act.

Therefore, the Commission believes that material information on the background of directors and executive officers is particularly relevant and should be set forth in proxy statements and information statements which relate to election of directors. It does not appear that such a requirement, if adopted, would result in a duplication of information since,

pursuant to Instruction H(a), such information is usually not required to be included in annual reports on Form 10-K.

COMMENTS INVITED ON ADDITIONAL DISCLOSURE

The proposed amendments announced today are intended only as a first step toward improving the adequacy of information regarding those persons responsible for corporate management. The Commission has received various recommendations concerning additional disclosure requirements in this area, especially as to remuneration of corporate officers and directors and as to certain transactions of management. Specifically, it has been suggested that disclosure should be required of the numerous emerging forms of indirect compensation or "perquisites" now given to management personnel.

The Commission is also concerned with the adequacy of information available regarding various forms of executive compensation plans for purposes of determining the actual compensation of management and for comparing the levels of managements' compensation among companies. The Commission is aware that these plans may take on a myriad of complex forms which are difficult to comprehend. In this regard, it is considering certain recommendations with respect to the formulation of a universal standard to be used in evaluating and comparing these plans. Therefore, at this time we specifically invite comments on the need for and possible content of additional disclosure requirements relating to management compensation, including executive compensation plans. It is requested that such comments indicate whether any suggested disclosure is intended for presentation in company proxy material or other reporting or registration documents as well.

In addition, we invite comments on the need for and possible format of additional disclosure concerning certain transactions of management involving the issuer and its subsidiaries. It has been suggested that the current exceptions from disclosure where the interest of the specified persons is solely that of a director of another corporation which is a party to the transaction; where the transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture or similar services; or where the transaction involves a loan and the issuer or any of its subsidiaries is primarily engaged in the business of lending be deleted.²

DISCLOSURE CONCERNING PROFESSIONAL LITIGATION

On July 25, 1973,³ the Commission announced an inquiry to obtain information

and ascertain the views of interested persons concerning the materiality of disclosure in filings with the Commission of civil and criminal litigation and administrative disciplinary proceedings affecting professionals practicing before the Commission. At that time the Commission indicated that it would consider whether rules or guidelines should be adopted to set standards for disclosure of such litigation or proceedings. After consideration of the views and comments obtained as a result of this inquiry, the Commission has concluded that the adoption of rules or guidelines regarding these matters would not be practicable or appropriate at this time. The Commission would remind issuers, however, that it is the responsibility of issuers filing with the Commission to determine under all relevant circumstances whether disclosure of litigation or proceedings relating to professionals who participate in the preparation of a filing is required under the securities laws.

Following is a synopsis of the proposed amendments to assist in a better understanding of their purpose and effect. Attention is directed, however, to the attached text of the proposals for a more complete understanding of their provisions.

PROPOSED AMENDMENTS OF DISCLOSURE REQUIREMENTS CONCERNING BACKGROUND OF DIRECTORS AND EXECUTIVE OFFICERS

If adopted, proposed amendments to the items of various forms requiring disclosure concerning the identity and background of directors and executive officers (Item 16 of Form S-1 (17 CFR 239.11); Item 19 of Form S-11 (17 CFR 239.18); Item 6 of Form 10 (17 CFR 249.210); and Item 12 of Form 10-K) would provide for the following revisions:

(1) Items 16, 19 and 6 of Forms S-1, S-11, and 10, respectively, would be conformed to require identical disclosure about the background of management. At present, the pertinent items of Forms S-1 and 10 contain only minor differences in wording and format. The requirements of Item 19 of Form S-11, however, are less extensive in that they do not require disclosure about certain material events in the background of directors and executive officers. Such a requirement would be added to Form S-11 if the proposed amendments are adopted.

(2) With respect to information required about company directors, the proposed amendments to the pertinent items of Forms S-1, S-11, 10 and 10-K would provide that companies using such forms disclose all other directorships held by their directors in any issuers with a class of securities registered pursuant to section 12 of the Exchange Act or subject to the requirements of section 15(d) of that Act or any company registered as an investment company under the Investment Company Act of 1940. In addition, disclosure would be required in such forms of all memberships held by each director on any committees of the issuer's board of directors.

(3) The ten year description of material events in the background of officers and directors which is currently required in Forms S-1, 10 and 10-K (and which is proposed to be included in Form S-11 and Schedule 14A) would be reduced to a five-year description of such events and would be substantially expanded as that description relates to litigation involving directors and executive officers. The proposed substantive revisions would result in disclosure about injunctions prohibiting any such person from engaging in any type of business practice; injunctions or consent decrees prohibiting such person from future violations of Federal or state securities laws; and civil actions in which such person was found to have violated any Federal or state securities laws. In addition, the item would be expanded to require disclosure of not only any court order, judgment or decree enjoining such persons from acting in certain capacities (i.e., as investment adviser, underwriter, etc.) but would also require disclosure of any such order, judgment or decree containing restrictions which would affect such activities.

(4) Currently, instructions to Item 16 of Form S-1 and Item 6 of Form 10 which define "executive officer," specify that identity and background information should be set forth in such forms about certain persons employed by the registrant who are not executive officers but who make or are expected to make significant contributions to the business of the registrant. As proposed, this reference to disclosure about significant persons would be redesignated as a separate sub-item in these forms and would be included for the first time in Item 19 of Form S-11. These changes are intended to clarify the importance of describing such persons, including their business experience and any family relationship between them and directors and executive officers of the company.

(5) Instruction 1 to Item 12 of Form 10-K presently indicates that Instruction 2 of Item 8 of that form, which defines the term "executive officer," also applies to Item 12. As proposed herein, Instruction 1 to Item 12 would be amended to further indicate that Instruction 3 to Item 8, which defines the term "family relationship" to mean "any relationship by blood, marriage or adoption, not more remote than first cousin," also applies to Item 12. Such amendment would result in no additional substantive disclosure but would clarify that the term "family relationship" has the same meaning in Item 12(a) that it has in Item 8(a). This term also is so defined in Item 6(c) of Form 10 and in several other forms under the Securities Act.

PROPOSED AMENDMENT TO DISCLOSURE OF MANAGEMENT REMUNERATION

At present, Item 17 of Form S-1, Item 20 of Form S-11, Item 7 of Form 10, Item 13 of Form 10-K, and Item 7 of Schedule 14A require disclosure in such forms of certain information "as to all

² See, for example, Form S-1, Item 20, Instruction 6; Form S-11, Item 24, Instruction 7; Form 10, Item 9, Instruction 3; Form 10-K, Item 15, Instructions 3 and 4; Schedule 14A, Item 7(f), Instructions 2 and 3.

³ Securities Act Release No. 5411 (July 25, 1973) (38 FR 22191).

direct remuneration paid by the registrant and its subsidiaries during the registrant's last fiscal year" to each director of the registrant whose aggregate remuneration exceeded \$40,000 and each of the three highest paid officers of the registrant whose aggregate direct remuneration exceeded that amount. The proposed amendment to such items would require disclosure in the respective forms of all such direct remuneration paid by the registrant and its "affiliates." Rule 405 under the Securities Act and Rule 12b-2 under the Exchange Act define an "affiliate" of a specified person as "a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified" and a "subsidiary" of a specified person as "an affiliate controlled by such person directly or indirectly through one or more intermediaries." Thus, the proposed amendment to the specified remuneration items would result in disclosure of information about remuneration paid not only by a registrant and its subsidiaries, but also by parents, control persons and other "affiliates" of the registrant.

PROPOSED AMENDMENTS RELATING TO THE DISCLOSURE OF MATERIAL PENDING LEGAL PROCEEDINGS

The proposed amendments to the items of various forms requiring disclosure of material pending legal proceedings [Item 12 of Form S-1; Item 16 of Form S-11; Item 10 of Form 10; Item 5 of Form 10-K; Item 3(a) of Form 8-K (or Item 1(a) of Part II of Form 10-Q as proposed in Exchange Act Release No. 12619 (July 12, 1976) (41 FR 29783)], if adopted, would merely conform the language in all applicable forms and would not impose any new substantive disclosure requirements. An instruction concerning the disclosure of pending environmental proceedings, currently included in Forms S-1, 10, 10-K, and 8-K, is proposed to be added to Item 16 of Form S-11.

Proposed Item 7(h) of Schedule 14A would require in the issuer's proxy statement or information statement a brief description of any material pending legal proceedings in which any director, officer or affiliate of the issuer; any nominee for election as director; any person owning more than 10 percent of the issuer's outstanding voting securities; or any associate of such person is a party adverse to the issuer or any of its subsidiaries or has a material interest adverse to the issuer or its subsidiaries. Pursuant to proposed Item 7(h), such description should include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. This information is now required, or will be required if the amendments proposed herein are adopted, in Forms S-1, S-11, 10, 10-K and 8-K.

The Commission is aware that proposed Item 7(h) if adopted, may result, in certain instances, in the disclosure of

frivolous actions brought in connection with proxy contests against issuers or nominees for election as directors. Therefore, the Commission specifically invites public comments addressed to the issue of whether it would be appropriate in the public interest or for the protection of investors to provide an exemption from proposed Item 7(h) for disclosure relating to civil actions brought in connection with proxy contests against issuers or nominees, and if so, under what conditions.

PROPOSED AMENDMENTS TO ITEM 6 OF SCHEDULE 14A REQUIRING INFORMATION REGARDING MANAGEMENT

The proposed amendments to Item 6 of Schedule 14A, if adopted, would conform the disclosure requirements of Item 6 with the current and proposed disclosure requirements of Form 10-K and other forms as they relate to the identity and background of directors and executive officers. As proposed herein, Item 6 would require, as to each person nominated for election as a director and each other person whose term of office as a director will continue after the meeting: disclosure of all memberships held by each such person on any committee of the issuer's board of directors; all directorships held by each such person in any issuers with a class of securities registered pursuant to section 12 of the Exchange Act or subject to the requirements of section 15(d) of that Act or any company registered as an investment company under the Investment Company Act of 1940; and the nature of any family relationship with any other person nominated for election as a director or whose term of office is to continue after the meeting and with any executive officer of the issuer. A proposed instruction to the item would clarify that the term "family relationship" means "any relationship by blood, marriage or adoption, not more remote than first cousin."

Another proposed amendment to Item 6 would result in issuers being required to disclose in their proxy statements or information statements a five-year description of certain material events in the background of persons nominated for election as a director, persons whose term of office as a director is to continue after the meeting and executive officers. This requirement would conform to similar requirements in Forms S-1, S-11, 10 and 10-K, as proposed. As set forth more fully in the text of the proposals, the events which would be described include: certain bankruptcy, insolvency or receivership proceedings; certain criminal convictions or proceedings; certain orders, injunctions or decrees restricting certain business or commercial activities of such persons or prohibiting future violations of Federal or state securities laws; and certain civil actions involving violations of such laws.

PROPOSED AMENDMENTS TO ITEM 7 OF SCHEDULE 14A REQUIRING DISCLOSURE OF MANAGEMENT REMUNERATION

In furtherance of its intention to conform certain of the disclosure requirements of Schedule 14A with Part II of

Form 10-K, the Commission is also proposing certain amendments to Item 7 of Schedule 14A which requires certain information about remuneration paid to management to be set forth in proxy statements and information statements which pertain to the election of directors and certain enumerated corporate actions. Item 7(a), for example, presently requires such statements to disclose "all direct remuneration paid by the issuer and its subsidiaries during the issuer's last fiscal year" to each director and the three highest paid officers of the issuer whose remuneration exceeded \$40,000. As discussed more fully above, a proposed amendment to Item 7(a), if adopted, would require disclosure of all such remuneration paid by the issuer and its "affiliates."

Proposed new Instruction 4 to Item 7(a) would require that if any part of the remuneration paid to officers and directors was paid pursuant to a material bonus or profit-sharing plan, the plan and the basis upon which directors or officers participate therein should be briefly described. This instruction is now included in Forms 10 (Instruction 6 to Item 7(a)) and 10-K (Instruction 5 to Item 13(a)) and in the remuneration items of several Securities Act registration forms.

Item 7(d) of Schedule 14A presently requires issuers to furnish information as to all options to purchase any securities from the issuer or any of its subsidiaries which were granted to or exercised by directors or officers since the beginning of the issuer's last fiscal year and as to all options held by such persons as of the latest practicable date. Pursuant to proposed new Instruction 5 to Item 7(d), if the options relate to more than one class of securities, such information would be required to be set forth for each class of the issuer's securities. This amendment, if adopted, would conform this instruction to Instruction 4 to Item 14 in Part II of Form 10-K.

In addition, as also discussed more fully above, proposed new Item 7(h), if adopted, would require disclosure in proxy statements and information statements of certain pending legal proceedings involving certain persons affiliated with the issuer of their associates.

OPERATION OF PROPOSALS

The Commission is mindful of the cost to registrants and others of its proposals and recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of the adoption of the proposals published herein.

Pursuant to section 23(a)(2) of the Exchange Act, the Commission has considered the impact that these proposals would have on competition and is not aware, at this time, of any burden that such rules, if adopted, would impose on competition not necessary or appropriate in furtherance of the purposes of that Act. However, the Commission specifically invites comments as to the competitive impact of these proposals, if adopted.

The Commission hereby proposes for comment (1) proposed amendments to Forms S-1 and S-11 pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act and (2) proposed amendments to Forms 10, 10-K, and 8-K and Schedule 14A pursuant to sections 12, 13, 14 15(d) and 23 (a) of the Exchange Act.

The Commission will endeavor to review the comments on these proposals, and take such further actions as may appear necessary, to have the amended disclosure requirements in effect by early 1977.

All interested persons are invited to submit their written views and comments on the foregoing proposals in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before December 15, 1976. Such communications should refer to File S7-658 and will be available for public inspection. The text of the proposed amendments is set forth below.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 2, 1976.

TEXT OF PROPOSED AMENDMENTS

I. Item 16 of Form S-1, Item 19 of Form S-11 and Item 6 of Form 10 are proposed to be amended to read as follows:

Section 239.11 Form S-1, registration statement under the Securities Act of 1933.

Section 239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

Section 249.210 Form 10, general form for registration of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.

DIRECTORS AND EXECUTIVE OFFICERS

(a) List the names and ages of all directors of the registrant and all persons chosen to become directors; indicate all positions and offices with the registrant held by each such person; if such person is a member of any committee(s) of the registrant's Board of Directors, indicate such membership(s); state his term of office as director and the period during which he has served as such; indicate any directorship held by each such person in any company with a class of securities registered pursuant to section 12 of the Exchange Act or subject to the requirements of section 15(d) of that Act or any company registered as an investment company under the Investment Company Act of 1940; briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as a director.

INSTRUCTIONS

1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. If any person chosen to become a director has not consented to act as such, so state.

(b) List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; indicate all positions and offices with the registrant held by each such person; state his term or

office as officer and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as an officer.

INSTRUCTIONS

1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. If any person chosen to become an executive officer has not consented to act as such, so state.

3. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policy making functions for the registrant.

(c) Where the registrant employs persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the registrant, such persons should be identified and their background disclosed to the same extent as in the case of executive officers.

(d) State the nature of any family relationship between any director or executive officer or person named in answer to paragraph (c) and any other director or executive officer or person named in answer to paragraph (c).

INSTRUCTION

The term "family relationship" means any relationship by blood, marriage or adoption, not more remote than first cousin.

(e) Give a brief account of the business experience during the past five years of each director and each executive officer and each person named in answer to paragraph (c), including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. Where an executive officer or person named in response to paragraph (c) has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(f) Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability and integrity of any director or executive officer of the registrant:

(1) A petition under the Bankruptcy Act or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of, such person, or any partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses) or is the subject of a criminal proceeding which is presently pending;

(3) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or

temporarily enjoining him from, or otherwise limiting the following activities:

(1) acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) engaging in any type of business practice; or

(iii) engaging in any activity in connection with the purchase or sale of any security or in any violation of Federal or state securities laws.

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or state authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in subparagraph (3), above, or to be associated with persons engaged in any such activity.

(5) Such person was found by a court of competent jurisdiction in a civil action to have violated any Federal or state securities law, and the judgment in such civil action has not been subsequently reversed.

INSTRUCTION

If any event specified in this subparagraph (f) has occurred but information in regard thereto is omitted on the ground that it is not material, the registrant shall furnish the Commission, as supplemental information and not as part of this registration statement, a description of the event and a statement of the reasons for the omission of information in regard thereto.

II. Item 12 of Form 10-K (§ 249.310) is proposed to be amended to read as follows: § 249.310 Form 10-K annual report pursuant to Section 13 or 15d of the Securities Exchange Act of 1934.

ITEM 12 DIRECTORS OF THE REGISTRANT

(a) List the name and age of each director of the registrant, the date on which his present term of office will expire and the nature of all other positions and offices with the registrant presently held by him; if such person is a member of any committee(s) of the registrant's Board of Directors, indicate such membership(s); also indicate any directorship held by such person in any company with a class of securities registered pursuant to Section 12 of the Exchange Act or subject to the requirements of Section 15(d) of that Act or any company registered as an investment company under the Investment Company Act of 1940. The same information shall be provided with respect to each person chosen to become a director.

(b) Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability and integrity of any director or executive officer of the registrant:

(1) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining him from, or otherwise limiting the following activities:

(i) acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) engaging in any type of business practice; or

(iii) engaging in any activity in connection with the purchase or sale of any security or in any violation of Federal or state securities laws.

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or state authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in subparagraph (3), above, or to be associated with persons engaged in any such activity.

(5) Such person was found by a court of competent jurisdiction in a civil action to have violated any Federal or state securities law, and the judgment in such civil action has not been subsequently reversed.

INSTRUCTION

1. Instructions 2 and 3 to Item 8 shall also apply to this item.

2. * * *

III. Items 6 and 7 of Securities Exchange Act Schedule 14A (Section 240.14a-101) are proposed to be amended to read as follows:

§ 240.14a-101. Schedule 14A. Information required in proxy statements.

Item 6. Information Regarding Management.

(a) If action is to be taken with respect to the election of directors, furnish the following information in tabular form to the extent practicable.

(1) With respect to each person nominated for election as a director and each other person whose term of office as a director will continue after the meeting:

(i) Name each such person, state when his term of office or the term of office for which he is a nominee will expire, and all other positions and offices with the issuer presently held by him and indicate which persons are nominees for election as directors at that meeting; if any person named in answer to this item is a member of any committee(s) of the issuer's Board of Directors, indicate such membership(s).

(ii) State the nature of any family relationship with any other person nominated for election as a director or whose term of office as a director will continue after the meeting, and with any executive officer of the issuer.

(iii) State his present principal occupation or employment and give the name and principal business of any corporation or other organization in which such employment is carried on. Furnish similar information as to all of his principal occupations or employments during the last five years, unless he is now a director and was elected to his present term of office by a vote of security holders at a meeting for which proxies were solicited under this regulation.

(iv) Indicate any directorship held in any company with a class of securities registered pursuant to Section 12 of the Exchange Act or subject to the requirements of Section 15(d) of that Act or any company registered as an investment company under the Investment Company Act of 1940.

(v) If he is or has been a director of the issuer state the period or periods during which he has served as such.

(vi) State, as of the most recent practicable date, the approximate amount of each class of equity securities of the issuer or any of its parents or subsidiaries, other than director's qualifying shares, beneficially

owned directly or indirectly by him. If he is not the beneficial owner of any such securities, make a statement to that effect.

(vii) If more than ten percent of any class of securities of the issuer or any of its parents or subsidiaries are beneficially owned by him and his associates, state the approximate amount of each class of such securities beneficially owned by such associates naming each associate whose holdings are substantial.

INSTRUCTION

The term "family relationship" means any relationship, by blood, marriage or adoption, not more remote than first cousin.

(2) With respect to each person nominated for election as director, each other person whose term of office as a director will continue after the meeting and each executive officer of the issuer, describe any of the following events which have occurred during the past five years and which are material to an evaluation of the ability and integrity of any such person:

(i) A petition under the Bankruptcy Act or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for business or property of, such person, or any partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing.

(ii) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses) or is the subject of a criminal proceeding which is presently pending;

(iii) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining him from, or otherwise limiting the following activities:

(a) acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(b) engaging in any type of business practice; or

(c) engaging in any activity in connection with the purchase or sale of any security or in any violation of Federal or state security laws.

(iv) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or state authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in subparagraph (iii), above, or to be associated with persons engaged in any such activity.

(v) Such person was found by a court of competent jurisdiction in a civil action to have violated any Federal or state securities law, and the judgment in such civil action has not been reversed.

INSTRUCTIONS

1. If any event specified in this subparagraph has occurred but information in regard thereto is omitted on the ground that it is not material, the issuer shall furnish the Commission, as supplemental information at the time preliminary materials are filed pursuant to Rules 14a-6 or 14c-5, a description of the event and a statement of the reasons for the omission of information in regard thereto.

2. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business

function (such as sales, administration or finance) and any other officer who performs similar policy making functions for the issuer.

ITEM 7 REMUNERATION AND OTHER TRANSACTIONS WITH MANAGEMENT AND OTHERS

(a) Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the registrant and its affiliates during the issuer's last fiscal year to the following persons for services in all capacities:

- (1) * * *
- (2) * * *

INSTRUCTIONS

1. * * *
2. * * *
3. * * *

4. If any part of the remuneration shown in response to this item was paid pursuant to a material bonus or profit-sharing plan, briefly describe the plan and the basis upon which directors or officers participate therein. See Instruction 1 to paragraph (b) for the meaning of the term "plan."

- (d) * * *
- (1) * * *
- (2) * * *

(3) As to all unexercised options held as of the latest practicable date, regardless of when such options were granted, state (i) the title and aggregate amount of securities called for, and (ii) the average option price per share.

INSTRUCTIONS

1. * * *
2. * * *

3. (i) Where the total market value on the granting dates of the securities called for by all options granted during the period specified does not exceed \$10,000 for any officer or director named in answer to paragraph (a) (1), or \$40,000 for all officers and directors as a group, this item need not be answered with respect to options granted to such person or group. (ii) Where the total market value on the dates of purchase of all securities purchased through the exercise of options during the period specified does not exceed \$10,000 for any such person or \$40,000 for such group, this item need not be answered with respect to options exercised by such person or group. (iii) Where the total market value as of the latest practicable date of the securities called for by all options held at such time does not exceed \$10,000 for any such person or \$40,000 for such group, this item need not be answered with respect to options held as of the specified date by such person or group.

(5) If the options relate to more than one class of securities, the information shall be given separately for each such class.

(h) With respect to (i) any director, officer or affiliate of the issuer, (ii) any nominee for election as director, (iii) any security holder named in answer to Item 5(d), or (iv) any associate of the foregoing persons, describe briefly any material pending legal proceedings to which any of the above persons is, or during the issuer's prior fiscal year was, a party adverse to the issuer or any of its subsidiaries or has or had a material interest adverse to the issuer or any of its subsidiaries. Such description shall include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought.

IV. Item 17 of Form S-1, Item 20 of Form S-11, Item 7 of Form 10 and Item 13 of Form 10-K are proposed to be amended to read as follows:

§ 239.11 Form S-1 registration statement under the Securities Act of 1933.

§ 239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

§ 249.210 Form 10, general form for registration of securities pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934.

§ 249.310 Form 10-K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

REMUNERATION OF DIRECTORS AND OFFICERS

(a) Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the registrant and its affiliates during the registrant's last fiscal year to the following persons for services in all capacities:

V. Item 12 of Form S-1, Item 16 of Form S-11, Item 10 of Form 10, Item 5 of Form 10-K and Item 3(a) of Form 8-K (or Item 1(a) of Part II of Form 10-Q as proposed in Exchange Act Release No. 12619 (July 12, 1976) (41 FR 29783) (File S7-645)) are proposed to be amended to read as follows:

§ 239.11 Form S-1, registration statement under the Securities Act of 1933.

§ 239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

§ 249.210 Form 10, general form for registration of securities pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934.

§ 249.310 Form 10-K, annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

§ 249.308 Form 8-K for current reports (or § 249.308a Form 10-Q, for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934).

LEGAL PROCEEDINGS

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by government authorities.

INSTRUCTIONS

1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be

contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described. Any material proceeding to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than 10 percent of any class of voting securities of the registrant, or any associate of any such director, officer or security holder is a party adverse to the registrant or any of its subsidiaries, or has a material interest adverse to the registrant or any of its subsidiaries also shall be described.

4. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, state or local provisions which have been enacted or adopted regulating the discharge of materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the registrant or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of current assets on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; provided however, that such proceedings which are similar in nature may be grouped and described generically, stating: the number of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the registrant, the effect of such proceedings on the business or financial condition of the registrant.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454-455; secs. 1, 2, 3-5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 119, 121, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78f, 78m, 78n, 78o(d), 78w(a)).

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 405]

[Regulations No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Criteria for Determination of Reasonable Charges Under the End-Stage Renal Disease Program

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553), that the regulations set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. These proposed regulations clarify the criteria for deter-

mining the reasonable charges for services of free-standing (nonprovider) maintenance dialysis facilities and of physicians caring for patients who are on maintenance dialysis or receive a kidney transplant. Special criteria are needed for these purposes because the validity of the usual criteria of "customary charge" and "prevailing charge" depends upon the existence of a non-Medicare population for comparison, but the Medicare End-Stage Renal Disease program covers virtually all persons suffering from that disease. The proposed regulations should not increase current costs incurred for renal disease treatments, as they clarify the policy in existing regulations and operational guidelines and provide for additional program cost containment policies. More specifically, this notice includes: (1) a republication, with certain clarifying amendments, of the interim regulations for making reasonable charge determinations under the End-Stage Renal Disease Program published in the FEDERAL REGISTER on June 29, 1973 (38 FR 17210); (2) addition of clarifying criteria for making reasonable charge determinations for services of nonprovider renal dialysis facilities; (3) delineation of the requirement for nonprovider dialysis facilities to submit to the Social Security Administration (SSA), under section 1833(e) of the Social Security Act, (42 U.S.C. 1395 (e)), cost information that is prepared under Medicare cost reporting principles and that is also subject to audit; (4) addition of clarifying criteria for making reasonable charge determinations for physicians' services to patients on renal dialysis or in connection with renal transplantation; and (5) addition of clarifying criteria for reimbursement of durable medical equipment and supplies furnished to patients on self-dialysis or in a self-dialysis training course. These amendments, initially published as administrative guidelines by SSA, were anticipated by, and implement the provisions of, 20 CFR 405.502(e), which was published in the FEDERAL REGISTER on June 29, 1973 (38 FR 17210), and which is substantially incorporated in the proposed regulations. (As required by § 422.430(b) of Subpart E, Regulations No. 22 (20 CFR 422.430(b)), the Bureau of Health Insurance Intermediary Letters containing current operating guidelines which are for use in determining payment amounts for nonprovider dialysis facilities for physician services in renal dialysis and in renal transplantation, and for medical equipment and supplies used in self-dialysis under the interim regulations, are available for inspection and copying in Social Security offices.) Interested parties are given 60 days from the date of publication of this notice in which to submit any data, views or arguments to the Social Security Administration, Department of Health, Education, and Welfare.

This publication of these proposed amendments does not affect the current applicability of § 405.502(e), which was published in the FEDERAL REGISTER on June 29, 1973, the operating guidelines

implementing that regulation, or any other regulation or guideline currently in effect. Those regulations and guidelines will continue in effect until they are amended by final publication of the proposed regulations being published herein with Notice of Proposed Rule Making. In addition, the proposed amendments apply to the initial implementing stages of the End-Stage Renal Disease Program. Development of the long range reimbursement policy objectives which were announced by the Secretary on April 17, 1974, and published as a separate document under the title "Final Policies, P.L. 92-603, Section 299I, End-Stage Renal Disease Program of Medicare" has not yet been completed. (Copies of this document may be obtained by sending a request to Chronic Renal Disease Branch, Bureau of Health Insurance, Social Security Administration, Room 1-0-3, East Low-Rise Building, 6400 Security Boulevard, Baltimore, Maryland 21235.) The long range policy objectives directed to reimbursement to facilities furnishing maintenance dialysis are summarized as follows: " * * * all facility reimbursement for dialysis services (will be related) to 'reasonable costs'. However, in order to control the high cost units, we will establish upper limits * * *, probably utilizing a classification scheme based on variables such as size, geographic locale, services provided, and mix of patients, analogous to that proposed for section 223 of P.L. 92-603. In addition, in order to provide an incentive to economize as well as to provide a realistic potential 'margin' necessary to maintain investor capital, 'target rates,' below which a facility will receive a variable share of the difference, will also be established in the case of non-hospital units. The target rates will also probably be based on a classification scheme."

While not fully implementing these policy objectives, the proposed amendment does allow the Department to move closer to their implementation. The cost data which will be gathered from all nonprovider facilities will be used in connection with the establishment of appropriate payment rates and will enable the Department effectively to implement the long range policies within twelve (12) months of final rulemaking.

The interim regulation on reasonable charge determinations, 20 CFR 405.502 (e), which was published in the FEDERAL REGISTER on June 29, 1973, and which is substantially incorporated in the proposed regulations with certain clarifying amendments, and the implementing guidelines reflect consultation on a range of issues with a large number of professional and institutional representatives, including many of the country's most distinguished nephrologists and transplant surgeons. The regulations on reasonable charge determinations being published as proposed rulemaking assures that all interested parties have a further opportunity to comment.

The proposed amendments would further implement section 299I of the Social Security Amendments of 1972, Pub. L. 92-603 (which amended section 226 of the

Social Security Act, 42 U.S.C. 426). That provision of the law extends Medicare protection against the cost of end-stage renal disease (ESRD) to virtually the entire population. The legislation authorizes the Secretary to limit reimbursement to facilities meeting those requirements as he may prescribe by regulation. In view of the new issues that stem from the virtually universal coverage of a very complex service, the absence of prior experience, and the possible precedents that the regulations may establish, long term decisions regarding Medicare payment policies and regulations implementing them will require continuing careful study and reevaluation based upon operating experience.

In view, however, of the provision in the law that reimbursement be made under the program only to facilities meeting requirements prescribed by the Secretary in regulations, it was imperative to publish interim regulations before July 1, 1973, the effective date of the legislation. This was necessary in order to remove any doubt that authority would exist on that date and thereafter for payment for life-sustaining services for patients receiving renal dialysis as well as for individuals receiving kidney transplants. It was essential, moreover, to assure to the extent then possible that, in view of the widely varying charging practices, the payments made were consistent with pertinent statutory criteria and limitations, and were at a level reflective of the Department's responsibility both to make payments which are reasonable in amount and to contribute to the maintenance of an adequate supply of treatment resources. A clear statement of congressional guidance for additional criteria is found in Senator Long's remarks contained in his presentation of the Conference Committee Report:

With respect to the coverage of kidney dialysis and transplantation the Secretary would have the authority to define reasonable charges in terms related to the reasonable costs of the treatment provided and comparable charges for physicians' time and skills, since obtaining customary and prevailing charges for new and complex procedures—many of which will be reimbursed by the program—would be quite difficult administratively (118 Cong. Rec. 36805 (1972)).

Generally, reimbursement under Part B of Medicare of physicians and other suppliers for covered items and services is based on "reasonable charges." Section 1842 of the Social Security Act (42 U.S.C. 1395u) requires that the criteria of "customary" and "prevailing" charges for similar services be taken into consideration in making the reasonable charge determination, but does not limit the consideration to these criteria. The use of "customary" and "prevailing" charge criteria for determining reasonable charges of physicians and other suppliers of services for renal dialysis and kidney transplantation was considered, but these criteria were found to be inadequate for application to renal disease reimbursement, except for certain purposes, e.g., physicians' acute dialysis care services and office visits. Since virtually all main-

tenance renal dialysis and kidney transplantation patients are eligible for Medicare benefits, all dialysis and transplantation services are covered by Medicare. Therefore, there are little or no valid non-Medicare data on which "customary" and "prevailing" charges can be determined.

Accordingly, the proposed amendments clarify the application of the criteria under the End-Stage Renal Disease Program for determining reasonable charges for renal dialysis services furnished by nonprovider dialysis facilities, for taking into account certain cost information, subject to audits in connection with such determinations, and for making reasonable charge determinations for physicians' services to patients on renal dialysis or in connection with renal transplantation. (Special rules concerning the reimbursement of end-stage renal disease services furnished by risk-basis health maintenance organizations (HMO's) or by certain HMO affiliated facilities are being published in a separate amendment to Subpart T (20 CFR Part 405).)

With respect to current guidelines on nonprovider facility reimbursement, reliance was placed, on an interim basis, on actual payments made to nonprovider facilities before July 1, 1973; and a "screen" was derived from the existing distribution of charges and payments, as there were broad variations in charges that were often unrelated to the length or complexity of the services rendered. (A "screen" is not an absolute upper limit or ceiling, but payment of a higher amount requires special documentation.) Also, it was recognized that payments received by facilities were related to the amounts that they either charged or negotiated and that they would have taken their costs into consideration. For some facilities, the period before July 1, 1973, provided a very good payment basis. Other facilities with higher costs than that period would yield as a payment rate (for example, they now have a higher rate of diabetic or elderly patients) have the option of requesting an exception to that payment rate on the basis of their costs; the payment rate could be increased, if it is inadequate, to give them a fair payment related to their costs.

Section 1833(e) of the Social Security Act requires that no payment shall be made under Part B of Medicare to those who furnish services (providers of services or others, including nonproviders), unless the information necessary to determine the amounts due for a current or prior payment period has been furnished (see § 405.2133, 41 FR 22515, June 3, 1976). Since under § 405.502(e) of the regulations charges are related to cost as the basis of reimbursement, the cost should be verified. Therefore, cost data must be submitted and are subject to such audit as may be necessary to assure proper payments under the ESRD program.

With respect to payment for physicians' services rendered to dialysis patients, the current guidelines provide two

reimbursement methods. Under one method, payment for "routine" services related to dialysis sessions are reimbursed through the facility as a part of its costs. (For the period beginning with the effective date of this amendment, a somewhat broader definition of "routine" services is provided than for the prior period.) "Nonroutine" patient care services related to dialysis treatments, as these services are defined in this amendment, are reimbursable by the carrier under the generally applicable "customary" and "prevailing" reasonable charge criteria, as are covered physician services rendered at other times. Under the other method, the physicians may elect a comprehensive monthly payment covering all of their services provided on an outpatient basis (except those specifically identified in this amendment) to all maintenance dialysis patients, both stable and medically complicated. To lessen the complexities in administering the program and to avoid an unreasonable selection of patients for the sole purpose of increasing reimbursement, the physicians may elect this alternative only where all of the physicians attending patients in the facility elect to do so. This alternative method recognizes the dialysis patients' needs for continuing management over relatively long periods of time and is responsive to physicians' charging patterns for comparable services. Guidelines are being developed by the Department regarding physician services rendered by individual physicians who elect this method of reimbursement to assure that at least those minimum services required by every dialysis patient are being delivered and that the reimbursement rate under this method is commensurate with the level and scope of services delivered.

With respect to renal transplants the processes involved in this kind of surgery, although performed for over a decade, vary from place to place and continue to change. The range of services provided in connection with this still relatively rare and special type of surgery, and the duration of the post-operative care considered to be an appropriate part of the surgical service provided to patients by the attending surgeons, vary considerably throughout the country. In addition, the patients requiring this unique medical service generally travel long distances to relatively few transplant centers where most such services are performed. Finally, the supplementary medical insurance (SMI) program is now almost the sole insurer against most of the medical expenses incurred by the transplant patient, regardless of age, and the medical marketplace does not offer an adequate independent basis for determining the appropriate payment level.

In view of the virtual absence of valid customary and prevailing charge experience for renal transplantation services, and to assure an SMI payment level that is fair and reasonable for the range of services usually provided by a surgeon to a kidney transplant recipient over a specified period of time, the proposed amendment to the regulations establishes over-

all national payment levels for renal transplantation services, which are to be adjusted by the carriers to give effect to variations in surgeons' charging practices from one carrier's service area to another. These adjusted amounts are then the maximum allowances in a carrier's service area for renal transplantation surgery and related services by surgeons.

The overall national supplementary medical insurance payment levels for renal transplantation services that are currently in effect were established through a review of charge experience during the initial year of the ESRD program. The maximum allowances have been established by the carriers on the basis of the payment levels and will be revised by each carrier at the beginning of each fiscal year to the extent permitted by the lesser of (1) the percentage changes in the economic index applied to limit increases in prevailing charge levels as specified in § 405.504(a)(3); or (2) the percentage changes, from one year to the succeeding year, in the carrier's prevailing charges (without regard to economic index adjustments) for a unilateral nephrectomy (or for another medical or surgical service designated by the Secretary for this purpose).

Reasonable charge determinations made under the criteria set forth in these amendments are subject to review under the provisions of Subpart H of this part.

Prior to final adoption of the proposed amendments to the regulations, consideration will be given to any data, views or arguments pertaining thereto which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203, on or before January 10, 1977.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue, S.W. Washington, D.C. 20201. If there are any questions about this regulation, please telephone M. Ckins (301-594-5400).

(Secs. 226(g), 1102, 1833(e) and (f), 1942, 1861(b) and (s), 1862, and 1871 of the Social Security Act; 86 Stat. 1464, 49 Stat. 647, as amended, 79 Stat. 302, as amended, 79 Stat. 309, as amended, 79 Stat. 313, as amended, 79 Stat. 325, 79 Stat. 331, and 81 Stat. 850, as amended; 42 U.S.C. 426(g), 1302, 13951(e) and (f), 1395u, 1395x(b) and (s), 1395y, and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance, No. 13.801, Health Insurance for the Aged—Supplementary Medical Insurance.)

Dated: August 4, 1976.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: October 7, 1976.

MARJORIE LYNCH,
Acting Secretary of Health,
Education, and Welfare.

Part 405 of Chapter III of Title 20 of the Code of Federal Regulations, as amended, is further amended as follows:

Section 405.502 is amended by revising paragraph (e) to read as follows:

§ 405.502 Criteria for determining reasonable charges.

(e) *Criteria for determination of reasonable charges under the End-Stage Renal Disease (ESRD) Program.* With respect to reimbursement for covered items and services in connection with renal dialysis and kidney transplantation, the normal medical market in which customary and prevailing charges can be determined will not be available; most such services will be reimbursed by the health insurance program. Therefore, with respect to nonprovider facilities, reasonable charges for these items and services shall be defined in terms related to charges or costs prior to July 1, 1973, and to the costs and allowances that are reasonable when the treatments are provided in an effective and economical manner. With respect to physicians' services to patients on renal dialysis or in connection with kidney transplantation, reasonable charges shall be defined in terms related to charges made for other services taking into account comparable physicians' time and skill requirements. (For provisions applicable to providers of services see, generally, Subpart D of this part.) The provisions contained in paragraphs (e) (1) through (4) of this section describe in detail the criteria for determining the reasonable charges for items and services in connection with transplantation or dialysis, and the limits which are established on charges and services above which reimbursement is made only upon additional justification. For special rules concerning the reimbursement of chronic renal disease program services furnished by risk-basis health maintenance organizations (HMO's) or by facilities owned or operated by or related to such HMO's by common ownership or control, see §§ 405.2042(b)(14) and 405.2050(c).

(1) *Reimbursement for nonprovider renal dialysis facility services.* A nonprovider renal dialysis facility which is approved to furnish maintenance renal dialysis treatments or provide self-dialysis training is reimbursed through the intermediary servicing the provider affiliated with it under the ESRD program. The reimbursement shall be accepted by the facility as payment in full, subject to the deductible and coinsurance (see §§ 405.240 and 405.245), for covered services furnished to the beneficiary. (See also § 405.231(h).) Reimbursement for services furnished after June 30, 1973, will be made under paragraph (e) (1) (i) through (vi) of this section.

(i) The customary charge of a facility for a dialysis treatment is derived from the weighted average of reimbursements from all parties made to the facility for such treatments furnished during the 12-month period preceding July 1, 1973. If a customary charge cannot be derived on this basis because the facility was not in operation during the 12-month period

preceding July 1, 1973, the facility's proposed schedule of charges and those of other comparable facilities in its area, will be considered in determining the reimbursable amount. Whichever method is used, the amount payable is subject to the limitation described in paragraphs (e) (1) (ii) and (iii) of this section.

(ii) Subject to the deductible and co-insurance, the reimbursable amount to a nonprovider renal dialysis facility for a maintenance dialysis treatment shall be the lower of the customary charge as derived in paragraph (e) (1) (i) of this section, or an administratively determined "screen," i.e., an amount derived from available data that may be periodically revised to reflect changes in the data, and used for identifying costs or charges which appear atypically high and therefore require documentation to justify their reasonableness. In determining the screen amounts, costs or charges of facilities which include laboratory services and/or physicians' supervisory services are taken into account. A separate screen is determined for nonprovider facilities which furnish extended peritoneal dialysis treatments (i.e., at least 30 hours in duration). A facility may request an equity adjustment in the reimbursable amount in accordance with paragraphs (e) (1) (v) and (e) (1) (vi) (b) of this section. See also paragraph (e) (1) (iv) of this section regarding the effect on the amount payable where the physician elects the alternative monthly payment plan.

(iii) Subject to the deductible and co-insurance, the amount payable for a self-dialysis training session to a nonprovider facility shall be the lower of the customary charge described in paragraph (e) (1) (i) of this section, or the screen amount for self-dialysis training. In determining the screen amounts, costs or charges of facilities which include laboratory services and/or physicians' supervisory services are taken into account. For services furnished after June 30, 1974, reimbursement for physicians' services for self-dialysis training shall be made directly to the physicians in accordance with paragraph (e) (2) (iii) of this section rather than being included in the facility's self-dialysis training payment.

(iv) Where the physicians rendering services to patients in a facility elect the comprehensive monthly payment plan described in paragraph (e) (2) (ii) of this section, the screen amounts described in paragraph (e) (1) (ii) and (iii) of this section will be reduced by a standard amount determined from available data or by the payment that was being made through the facility for the physician's supervisory services rendered to maintenance dialysis and self-dialysis training patients, whichever reduction yields the lesser rate. Where the facility was reimbursed at a rate below the screen amounts described in paragraphs (e) (1) (ii) and (iii) of this section, this rate should be reduced either by an amount equivalent to the portion that was previously being paid for physicians' supervisory services or to the screen amount adjusted for the standard amount as in

the foregoing sentence, whichever reduction yields the lesser rate.

(v) A nonprovider facility which can demonstrate unusual hardship because of the amount of payment made under the ESRD program may submit documentation of its costs and request a determination with respect to an equity adjustment in the payment.

(vi) Beginning with the facility's first accounting year that ended after June 30, 1973, the effective date of the ESRD program, nonprovider renal dialysis facilities are required to furnish adequate cost information, in accordance with section 1833(e) of the Act (42 U.S.C. 1395l(e)). This information will be used for the following purposes:

(a) Determination of rates of reimbursement for maintenance renal dialysis treatments and other reasonable and medically necessary services rendered in connection with these treatments.

(b) Justification of requests made for increases in reimbursement rates determined under paragraphs (e) (1) (ii) and (iii) of this section.

(c) Accumulation of data for overall program evaluation.

The cost information shall be furnished by the nonprovider facilities in accordance with the cost reporting, recordkeeping, and audit requirements set forth in § 405.406.

(2) *Reimbursement for physicians' services rendered to renal dialysis patients.* Physicians' services rendered to renal dialysis patients are reimbursable, if determined to be reasonable and medically necessary and if otherwise covered by the Medicare program. Physicians may elect to receive a comprehensive monthly payment for their services rendered in connection with patients who are on maintenance dialysis in a facility or at home. This comprehensive monthly payment is the "Physician Reimbursement Method No. 2" that is described in paragraph (e) (2) (ii) of this section. Where physicians have not elected to receive the comprehensive monthly payment, their services are reimbursable under the "Physician Reimbursement Method No. 1" that is described in paragraph (e) (2) (i) of this section. (Paragraphs apply to physician services to graphs (e) (2) (i) through (iii) of this section apply to physician services to patients on maintenance dialysis in either a provider or nonprovider facility.)

(i) *Physician reimbursement method No. 1.* Under this method, supervisory services, as defined in paragraph (e) (2) (i) (a) of this section, provided by physicians to maintenance dialysis patients dialyzing in facilities are reimbursable to the facility by the intermediary as a facility service part of the dialysis session. Nonroutine services rendered to patients during and related to the dialysis procedure (see paragraph (e) (2) (i) (c) (1) of this section) and services which must be rendered at a time other than during the dialysis procedure (see paragraph (e) (2) (i) (c) (2) of this section) are reimbursable to the physician (or to the beneficiary) by the carrier in accordance with the reasonable charge criteria

set forth in § 405.502 (a) through (d). Physicians' services rendered to hospital inpatients who were not admitted solely to receive maintenance dialysis and to patients who are self-dialyzing at home are also reimbursable under these reasonable charge criteria. Physicians' administrative services are considered to be facility costs (see paragraph (e) (2) (i) (b) of this section) included in the rates of payment for dialysis treatments and are reimbursable to the facility.

(a) Supervisory services for patients who are receiving maintenance dialysis in a facility are those physicians' services which are related to the care of the patient and the need for medical management over the period of time the patient is on maintenance or training dialysis. They are non-episodic services which are furnished during the dialysis session; they reflect the facility's responsibility to provide services under the general supervision of a physician. They include all patient care services not specifically defined as nonroutine in paragraph (e) (2) (i) (c) (1) of this section. Examples of supervisory services include, but are not limited to:

(1) Being available to patients and to staff for consultation on the care of the patients;

(2) Overseeing the performance of dialysis on individual patients, including but not limited to review of laboratory tests and adjustments of dialysis procedures;

(3) Monitoring of the patient's medical status and vital signs, including needed adjustments in medications;

(4) Determining the need for supplies and medications and authorizing them;

(5) Reviewing dietary issues and modifying dietary control as needed;

(6) Evaluating the appropriateness of the patient's proposed treatment modality;

(7) Reviewing psychosocial issues; and

(8) Making pre- and post-dialysis examinations.

(b) The administrative services that are rendered by physicians and that are directly related to the support of the facility are a part of the facility's cost or charge for dialysis. These services are differentiated from supervisory services and other physicians' services related to patient care because they are not related directly to the patient's care, but are of benefit to all of the patients as a whole as well as to the facility. Examples of such services include staff training, participating in the management of the facility, advising on procurement of facility supplies, supervising staff for other than direct patient care services, and staff conferences.

(c) Physician services not considered as supervisory services are: (1) Services rendered during dialysis which are non-routine i.e., declothing of shunts, needle insertions into fistulae, supervision of blood transfusions, care during immediately life-threatening complications related to the dialysis procedure, and care of nonrenal conditions; and (2) services which must be rendered at a time other than during the dialysis procedure, e.g.,

monthly and semiannual examinations to review health status and treatment. (For periods before the effective date of this amendment, physician services not considered as supervisory services are for purposes of this paragraph defined to include certain services which are personally rendered by the physician during outpatient maintenance dialysis. More generally, they include, but are not limited to, the following kinds of services: monthly and semi-annual examinations; treatment of medical disabilities associated with renal disease, such as hypotension and hypertension—including acute medical emergencies as well as incidental diagnosis and treatment of other acute and chronic medical conditions; administration of blood; insertion of fistula needles in difficult cases; shunt cannula declotting; and management during the dialysis procedure of medical problems which are not necessarily related to the dialysis process or to renal disease.)

(ii) *Physician reimbursement method No. 2.* Reimbursement by the carrier on a monthly basis for all outpatient care services, other than those specified in paragraph (e) (2) (i) (a) of this section, rendered to patients receiving maintenance dialysis or self-dialysis training may be voluntarily elected by physicians as an alternative to the reimbursement method described in paragraph (e) (2) (i) of this section. Payment of the monthly amount, subject to the deductible and coinsurance, for all such services provided for that month is made by the carrier either to the physician, if the physician accepts assignment, or to the patient, if the physician does not accept assignment. This alternative reimbursement method recognizes the need of patients on maintenance renal dialysis for continuing medical management over relatively long periods of time, reflects the reduced need for physician services for self-dialysis patients with a reduced monthly amount, and is responsive to physicians' charging patterns in their localities.

(a) Physician services not covered by the monthly payment which may be reimbursed in accordance with the reasonable charge criteria, when the patient's attending physician has elected the alternate reimbursement are:

- (1) Declotting of shunts.
- (2) Covered physicians' services furnished by another physician during periods when the patient or his attending physician is not available for outpatient services as set out in paragraph (e) (2) (ii) (c) of this section.
- (3) Needed physician services which are rendered either by the physician providing renal care or by another physician and which are beyond those related to the treatment of the patient's renal condition and which are not incidental to services during a dialysis session or office visit necessitated by the renal conditions. The physician should provide documentation that the illness is not related to the renal condition and that added visits are required. The carrier's medical staff, acting also on the basis of medical consultation obtained by the carrier as may be appropriate, determines whether addi-

tional reimbursement is warranted for treatment of the unrelated illness.

(b) A physician may elect this comprehensive monthly payment method only where all of the physicians in the facility who render services to patients either on maintenance dialysis or undergoing self-dialysis training elect to do so with respect to that facility. The election of this method of reimbursement covers also self-dialysis patients the physician attends. Physicians will submit a statement of agreement concerning their election of the monthly payment method. This payment method shall be applied to dialysis services furnished in the first month following the month in which all physicians in the facility elect it. Physicians may terminate this payment method by written notice to the servicing carrier at least 60 days before the first day of the calendar month in which the termination is to take effect.

(c) The monthly payment amount is reduced in proportion to the number of days the patient is: hospitalized and the physician bills for each service rendered during hospitalization; or dialyzed in an outpatient facility other than his usual treatment setting where the monthly payment has not been elected by the physicians; or not attended by the physician or his substitute for any reason.

(d) The factors used in determining the monthly payment amounts will be related to program experience and to the charging practices of comparable physicians for comparable services. The factors will be reevaluated periodically on the basis of program experience and may be adjusted as necessary to reflect changes in these charging practices and modes of furnishing services and to assure fairness.

(iii) *Physician reimbursement for self-dialysis training.* Reimbursement for physicians' services rendered to dialysis patients undergoing self-dialysis training will be limited to a flat amount, to be determined from program experience—and reviewed periodically—for each patient under the physician's supervision during the training course, subject to the deductible and coinsurance provisions. Payment will be made upon completion of the training course, and will be in addition to any amounts payable under either of the reimbursement methods, described in paragraphs (e) (2) (i) and (ii) of this section, for physicians' services rendered to a renal dialysis patient. Where the training course is not completed, e.g., the patient can no longer be trained, payment will be proportionate to the time spent in training. Where a training course began before July 1, 1974 (the effective date of a flat training fee provision), payment should be similarly prorated for any part of the course which extended beyond June 30, 1974. All those physicians' services determined to be required to create the capacity for self-dialysis are covered by this payment.

(3) *Payment for physicians' services in connection with renal transplantations.* (i) For the period July 1, 1973 through April 14, 1975, the reimbursable amount for physicians' services in con-

nection with a renal transplantation, other than recipient nephrectomies including pre- and post-operative care for 180 days, shall not exceed \$900, subject to the deductible and coinsurance. Additional payments in amounts established on the basis of program experience will be allowed for other surgical procedures performed concurrently with the transplant operation.

(ii) Based on a review of charge experience for renal transplantation services during the initial year of the ESRD program, these criteria are revised effective April 15, 1975. Beginning after April 14, 1975, comprehensive payments are made, subject to the deductible and the coinsurance, for all the surgeon's services in connection with a renal transplantation, including the usual pre- and post-operative surgical care, and for immunosuppressant therapy, when supervised by the attending transplant surgeon, for a period 60 days. Additional sums, in amounts established on the basis of program experience, may be included in the comprehensive payment for other surgery performed concurrently with the transplant operation. The comprehensive payments to be made may not be based on amounts that exceed either the actual charges made for the transplantation services, or amounts the carriers derive from overall national payment levels established under the ESRD program and adjusted to give effect to variations in physicians' charges throughout the nation. (These adjusted amounts are the maximum allowances in a carrier's service area for renal transplantation surgery and related services by surgeons.) The maximum allowances, computed under these instructions, will be revised at the beginning of each fiscal year to the extent permitted by the lesser of: changes in the economic index as described in § 405.504(a) (3) (i), or percentage changes, from one year to the succeeding year, in the weighted average of the servicing carrier's prevailing charges (before adjustment by the economic index) for a unilateral nephrectomy (or for another medical or surgical service that may be designated by the Secretary for this purpose). Payments for covered medical services provided to the transplant recipient by other specialists, as well as for services by the transplant surgeon after the 60-day period covered by the comprehensive payment, shall be made under the reasonable charge rules set forth in paragraphs (a) through (d) of this section. The payments for physicians' services in connection with renal transplantations will be changed on the basis of program experience and the expected advances in the medical art for this operation.

(4) *Payments for durable medical equipment and supplies.* Providers of services that furnish durable medical equipment are reimbursed in accordance with Subpart D of this part. When other suppliers furnish durable medical equipment (and supplies essential to the effective use of the equipment) necessary for self-dialysis treatments, payment shall be made in accordance with paragraphs (a) through (d) of this section. A

variety of contractual undertakings may be entered into by the patient for the leasing or purchase of a dialysis machine and delivery of disposable supplies. Some agreements contain provisions whereby all supplies are furnished through the Medicare approved facility in the locality that provides support services to home dialysis patients. If the suppliers and the facility which furnishes support services agree to have the supplies routed through that facility, the reimbursement for the necessary supplies will be made to the facility by its carrier (i.e., the intermediary servicing the Renal Dialysis Center with which it has an affiliation agreement or arrangement (see § 405.2160)) on a reasonable cost basis.

[FR Doc.76-32882 Filed 11-8-76;8:45 am]

Food and Drug Administration

[21 CFR Part 102]

[Docket No. 76P-0330]

INFANT AND JUNIOR FOODS

Establishment of Common or Usual Name; Extension of Comment Period

The Food and Drug Administration is extending to January 7, 1977 the period for comments on the proposed regulation to establish a common or usual name for infant and junior foods.

In the FEDERAL REGISTER of September 7, 1976 (41 FR 37593), the Commissioner of Food and Drugs issued a proposed regulation to establish a common or usual name for infant and junior foods, exclusive of infant formulas and milk. Comments were to be filed on or before November 8, 1976.

The Commissioner has received a letter requesting an extension of the comment period from the National Canners Association (NCA) 1133 20th St. NW, Washington, DC 20036. In its letter, NCA asserts that a 60-day extension of the comment period is essential to permit a complete and accurate assessment of the costs and technological impediments to the proposal. The letter from NCA is on file with the Hearing Clerk, Food and Drug Administration.

The Commissioner hereby extends the period for filing comments on the subject proposal to January 7, 1977.

Interested persons may submit to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office during working hours, Monday through Friday.

(Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403(a), 701(a), 52 Stat. 1041, 1047,

and 1055 (21 U.S.C. 321(n), 343(a), 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: November 2, 1976.

JOSEPH P. HILE,
Associate Commissioner for
Compliance.

[FR Doc.76-32829 Filed 11-4-76;10:39 am]

[21 CFR Part 125]

[Docket No. 76P-0329]

INFANT FOODS

Percentage Declaration of Ingredients; Extension of Comment Period

The Food and Drug Administration is extending to January 7, 1977, the period for comments on the proposed regulation to require percentage declaration of ingredients on infant food labels.

In the FEDERAL REGISTER of September 7, 1976 (41 FR 37595), the Commissioner of Food and Drugs issued a proposal to require that infant food labels bear percentage declaration of ingredients when such ingredients are present at levels of 5 percent or more in making the finished food. Comments were to be filed on or before November 8, 1976.

The Commissioner has received a letter requesting an extension of the comment period from the National Canners Association (NCA), 1133 20th St. NW, Washington, DC 20036. In its letter, NCA asserts that a 60-day extension of the comment period is essential to permit a complete and accurate assessment of the costs and technological impediments to the proposal. The letter from NCA is on file with the Hearing Clerk, Food and Drug Administration.

The Commissioner hereby extends the period for filing comments on the subject proposal to January 7, 1977.

Interested persons may submit to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office during working hours, Monday through Friday.

(Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403(j), 701(e), 52 Stat. 1041, 1048, 70 Stat. 919 (21 U.S.C. 321(n), 343(j), 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: November 2, 1976.

JOSEPH P. HILE,
Associate Commissioner for
Compliance.

[FR Doc.76-32828 Filed 11-4-76;10:39 am]

[21 CFR Parts 436 and 446]

[Docket No. 76N-0167]

TETRACYCLINE ANTIBIOTIC DRUGS

Updating and Technical Revisions

Correction

In FR Doc. 76-27062, appearing at page 40168 in the issue of Friday, September 17, 1976, the following changes should be made:

1. On page 40168, column 3, paragraph number 1., line 7, the second section reference reading: "446.367d" should read: "446.367b."

2. On page 40169, in the second column, paragraph number 4.a., line 2, the word "are" should be substituted for the word "and." In column 3, paragraph c., in the last line "Part 446" should read "Part 446". In the paragraph immediately following paragraph c., line 6, the word "revives" should read "revises."

3. On page 40170, column 2, in the paragraph beginning with "Therefore, under the Federal Food * * *, on line 7 the figure "24162" should read: "24262."

4. On page 40172, column 1, in § 446.16(a), line 4, the formula in brackets should read: "[4S-(4a,4aa,5aa,6β,12aa)1." On the last line, column 1, substitute the word "demeclocycline" for the word "demecycline". In the 3rd column, in § 446.50(a), line 4, the formula in brackets should read, "[4S-(4a,4aa,5aa,5aa,12aa)1."

5. On page 40173, column 1, § 446.65(a) (1), line 7, place "1," behind the word "methyl-".

6. On page 40174, column 1, in § 446.66(a), line 4, the formula in brackets should read: "[4S-(4a,4aa,5aa,5aa,6β,12aa)1."]

7. On page 40175, column I, in § 446.67 a(a), lines 4 and 5, the formula in brackets should read: "[4S-(4a,4aa,5aa,5aa,6β,12aa)1," and in paragraph (a) (2) of § 446.67a the last line should read "§ 432.5 * * * and not "423.5." In column 3, § 446.76a(a), lines 4 and 5, the formula in brackets should read "[4S-(4a,4aa,5aa,6β,12aa)1," and on line 5, place "5," between the "4a," and "5a,"

8. On page 40176, column 2, in § 446.81 (a) (1), line 6, the first word should read "octahydro" and not "actahydro"; the numbers following the word should read, "3, 6, 10, 12, 12a," and place a "(7)" in front of the word "Crystallinity." after paragraph (a) (6).

9. On page 40177, 2nd column, in § 446.82(a) (1), the second paragraph (vi) should be designated paragraph "(vii)" and paragraph "(vii)" should be designated paragraph "(viii)".

10. On page 40186, column 3, in paragraph "(b) Tests and methods * * *, line 10 should be deleted and the following substituted therefor: "than 150 micrograms of tetracycline".

11. On page 40187, column 2, in change no. 70a., on the 2nd and 3rd lines, the word should be "sulfate" and not "sulfat", and in column 3, paragraph (b) "Tests and methods * * *, on line 10 strike "50" and insert "25" therefor.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[21 CFR Part 1306]

PARTIAL FILLING OF PRESCRIPTIONS FOR CONTROLLED SUBSTANCES

Emergency Kits; Computerized Refill Information

The Drug Enforcement Administration has received suggestions from professional associations and organizations proposing that DEA issue new regulations permitting pharmacies to partially fill prescriptions in unit doses for controlled substances for patients in long term care facilities. These new regulations, if issued, should reduce the health care costs to such patients by limiting the amounts of controlled substances actually dispensed and by decreasing the quantities of controlled substances which might otherwise accumulate at long term care facilities, which are non-registered locations.

Additionally, the Drug Enforcement Administration has received comments and letters from pharmacists, educators and data processing companies, who have suggested that DEA implement regulations allowing pharmacies to use computerized data processing systems in recording and retrieving refill information for prescriptions for Schedules III and IV controlled substances.

Through its working committees, the Drug Enforcement Administration has evaluated these suggestions for their practicality and impact and agrees that regulations should be issued permitting implementation of a computerized system for purposes of storing and utilizing prescription refill information for such substances.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. §§ 821 and 871(b), and delegated by regulations of the Department of Justice to the Administrator of the Drug Enforcement Administration, the Administrator hereby proposes that §§ 1301.75, 1304.11, 1306.02, 1306.13, 1306.22, 1306.23, and 1306.31 be amended as follows:

§ 1301.75 Amended.

1. By amending the second sentence of subsection (b) of § 1301.75 by inserting "except as provided in § 1306.13(c)", between the words "However" and "pharmacists".

2. By revising the second sentence of subsection (a) of § 1304.11 to read as follows:

§ 1304.11 General requirements for inventories.

(a) * * *

Controlled substances shall be deemed "on hand" if they are in the possession of or under the control of the registrant,

including substances returned by a customer, substances ordered by a customer but not yet invoiced, substances stored in a warehouse on behalf of the registrant, substances dispensed by a pharmacy and retained there pending subsequent delivery to the patient, substances dispensed by a pharmacy and delivered to a long term care facility for administration to a patient there, * * *.

3. By amending § 1306.02 by adding new paragraphs (b) and (e); and by redesignating existing paragraphs (b) through (g) as paragraphs (c), (d) and (f) through (i) respectively.

§ 1306.02 Definitions.

(b) the term "consulting pharmacy" means a pharmacy which provides prescription dispensing services for patients in a long term care facility.

(e) a "long term care facility" means a nursing home, or other institution which provides extended health care to patients residing therein.

4. By revising § 1306.13 to read as follows:

§ 1306.13 Partial filling of prescription; unit dose/emergency kit systems.

(a) The partial filling of a prescription for a controlled substance listed in Schedule II is permissible, if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and he makes a notation on the face of the written prescription (or written record of the emergency oral prescription) of the initial partial quantity dispensed, the date dispensed, and the dispenser's name or initials. The pharmacist may fill the remaining portion of the prescription within 72 hours of the first partial filling and on doing so shall make a notation of the remaining portion dispensed in the manner referred to above. However, if the remaining portion is not or cannot be filled within the 72 hour period, the pharmacist shall so notify the prescribing individual practitioner. No further quantity may be supplied beyond 72 hours without a new prescription.

(b) A pharmacist who receives a prescription for a Schedule II controlled substance for a patient in a long term care facility which employs a unit-dose system or the equivalent may dispense a Schedule II controlled substance prescription in partial quantities as hereinafter provided, up to the total amount prescribed provided that a notation of each partial filling of such prescription is entered thereon in conformance with the requirements of 21 CFR § 1306.23(a).

(c) A consulting pharmacy to a long term care facility (LTCF) may dispense controlled substances pursuant to subsection (b) of this section under a unit-dose system, in accordance with the following:

1. Upon receipt of a written or oral controlled substances prescription which conforms to the requirements of Part

1306, the consulting pharmacy may fill the prescription in full, limited to a 34 day supply or one hundred dosage units (whichever is less) for Schedule II controlled substances, and may retain the complete prescription package at the pharmacy under security required by § 1301.75, pending subsequent delivery to the LTCF;

2. The consulting pharmacy may deliver to the LTCF, at intervals, portions not exceeding five days supply, of the completed prescription;

(A) Such portions may be delivered only to a LTCF which is equipped with a securely locked, substantially constructed cabinet or cart for the storage of Schedule II through V controlled substances which meets the requirements of § 1301.75(a);

(B) All controlled substances delivered by the consulting pharmacy to the LTCF shall be stored in the above cabinet or cart pending administration of the substances to the patients, except as hereinafter provided;

3. The consulting pharmacy may provide an emergency kit containing stimulants, depressants and narcotics in Schedule II through V, limited to a three dose supply of each, solely for administration to patients by authorized LTCF personnel and upon the express authorization of an individual practitioner. Such authorization shall be in compliance with the provisions of § 1306.11 and 1306.21. The emergency kit shall be stored in a securely locked, substantially constructed cabinet or cart required by this subsection.

5. By amending § 1306.22 by designating the existing paragraph therein as subsection (a), and by adding the following:

§ 1306.22 Refilling of prescriptions.

(b) as an alternative to the procedures provided by subsection (a), an automated data processing system may be used for the storage and retrieval of refill information for prescriptions for controlled substances in Schedules III and IV, subject to the following conditions:

(1) Any such proposed computerized system must provide on-line retrieval (via CRT display or hard-copy printout) of original prescription information. This shall include, but is not limited to, data such as the original prescription number, date of issuance of the original prescription by the practitioner, full name and address of the patient, name, address and DEA registration number of the practitioner, and the name, strength, dosage form, and quantity of the controlled substance prescribed (and quantity dispensed if different from the quantity prescribed).

(2) Any such proposed computerized system must also provide on-line retrieval (via CRT display or hard-copy printout) of the refill history for prescriptions for Schedule III or IV controlled substances. This refill history shall include, but is not limited to, the name, strength, and dosage form of the controlled substance, the date of refill-

ing, the quantity dispensed, the identification code, or name or initials of the dispensing pharmacist for each refilling, and the total number of refills to date for that prescription.

(3) Documentation of the fact that the refill information entered into the computer each time a pharmacist refills an original prescription for a Schedule III or IV controlled substance is correct must be provided by the individual pharmacist who makes use of such a system. If such a system provides a hard-copy print-out of each day's controlled substance prescription refill data, that print-out shall be verified, dated, and signed by the individual pharmacist who refilled such a prescription. The individual pharmacist must verify that the data indicated is correct and then sign this document in the same manner as he would sign a check or legal document (e.g., J. H. Smith, or John H. Smith). This document shall be maintained in a separate file at that pharmacy for a period of two years from the dispensing date. This printout of the day's controlled substance prescription refill data must be provided to each pharmacy using a computer system either at the end of every shift, or at the end of every working day, or within 24 hours of the end of every working day. It must be verified and signed by each pharmacist who is involved with such dispensing on the same day that the printout is received. In lieu of such a printout, the pharmacy shall maintain a bound log book, or separate file, in which each individual pharmacist involved in such dispensing shall sign a statement (in the manner previously described) each day, attesting to the fact that the refill information entered in the computer that day has been reviewed by him and is correct as shown. Such a book or file must be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing the appropriately authorized refill.

(4) Any such computerized system shall have the capability of producing a print-out of any refill data which the registrant is responsible for maintaining under the Act and its implementing regulations. For example, this would include, but is not limited to a prescription-by-prescription (and refill-by-refill) audit trail for any specified strength and dosage form of any controlled substance (by either brand or generic name) or an audit trail of any controlled substance prescriptions written for a particular patient, or by a particular practitioner. Such a printout must be made available to any duly authorized Special Agent or Compliance Investigator of DEA within forty-eight (48) hours from the time at which the request is first made by the Agent or Investigator.

(5) In the event that a pharmacy which employs such a computerized system experiences system down-time, that

pharmacy must have an auxiliary procedure which will be used for documentation of refills of Schedule III and IV controlled substance prescriptions. This auxiliary procedure must insure that refills are authorized by the original prescription, that the maximum number of refills has not been exceeded, that all of the appropriate data is retained for on-line data entry as soon as the computer system is available for use again.

(c) When filing refill information for original prescriptions for Schedule III or IV controlled substances, a pharmacy may use only one of the two systems described in subsection (a) or (b) of this section.

(d) Any registrant who intends to use a system provided by subsection (b) of this section must first apply for and receive a Permit to Maintain Central Records as required by § 1304.04(a).

§ 1306.23 [Amended]

6. By amending the first sentence of § 1306.23 by inserting "subject to the provisions of § 1306.13(b)", between the words "permissible" and "provided."

§ 1306.31 [Amended]

7. By amending § 1306.31(a) by deleting the third sentence thereof and substituting the following:

"A pharmacist dispensing such substance pursuant to a prescription shall label the substance in accordance with § 1306.24, shall file the prescription in accordance with § 1306.25 and shall be permitted to partially fill the prescription under the conditions provided by and in accordance with § 1306.13(c)."

All interested persons are invited to submit their comments and objectives in writing regarding these proposals. These comments or objections should state with particularity the issues concerning which the person desires to be heard.

Comments and objections should be submitted in triplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative, and must be received by December 10, 1976. If a person believes that one or more issues raised by him warrant a full adversary-type hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds, in his sole discretion, warrant a full adversary-type hearing, the Administrator shall order a public hearing in the FEDERAL REGISTER summarizing the issues to be heard and setting the time for the hearing by January 10, 1977.

Dated: November 2, 1976.

PETER B. BENSINGER,
Administrator.

[FR Doc.76-32969 Filed 11-8-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration

[30 CFR Part 11]

RESPIRATORY PROTECTIVE DEVICES

Proposed Amendments

Correction

In FR Doc. 76-29845 appearing on page 44864 in the issue for Wednesday, October 13, 1976, in the last column of page 44865 under the revised material for § 11.203(b)(6) in the 5th line "ppm chloride" should have read "ppm vinyl chloride".

VETERANS ADMINISTRATION

[38 CFR Part 21]

VETERANS EDUCATION

Open Circuit Television

The following regulatory change to Part 21, Title 38, Code of Federal Regulations is made to clarify and update existing provisions.

Section 21.4233(c) is revised to clarify the acceptable number of credit-hours of training which may be allowed for the purpose of full-time measurement when pursued by open circuit television.

Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All relevant material received before December 9, 1976, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays), during the mentioned 30-day period and for 10 days thereafter. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office, Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that records are available for inspection only in Central Office and furnished the address and the above room number.

Notice is also given that it is proposed to make these changes effective date of final approval.

In § 21.4233, paragraph (c)(1)(iii) is revised to read as follows:

§ 21.4233 Combination.

(c) Television—(1) Open circuit telecast. A program may be pursued in part by open circuit telecast when:

(iii) A major portion of the credit hours for which the veteran or eligible person is enrolled during any semester or quarter is offered through conventional classroom and/or laboratory ses-

sions. In no instance may a veteran or eligible person include in his or her program during any one semester or quarter more than 6 credit hours of open circuit telecast instruction for the purpose of computing the rate of educational assistance allowance.

Approved: November 3, 1976.

By direction of the Administrator.

ODELL W. VAUGHN,
Deputy Administrator.

[FR Doc.76-32975 Filed 11-8-76;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

[50 CFR Part 216]

REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

**Ex Parte Communications List for Hearing
on the Taking of Marine Mammals Inci-
dental to Commercial Fishing Opera-
tions for Yellowfin Tuna**

On October 1, 1976, regulations entitled
Appendix—Taking of Marine Mammals

Incidental to Commercial Fishing Operations; Expedited Procedures for Consideration of Proposed Regulations for Calendar Year 1977 were published in the FEDERAL REGISTER (41 FR 43550). Section 10 of those regulations prohibit ex parte communications to persons who may participate in the decisional process. Mr. Martin Hochman, who will be counsel advocating the position of the agency at the hearing, was inadvertently included in the list of such persons which was published in the FEDERAL REGISTER (41 FR 45015) on October 14, 1976. The Government in the Sunshine Act does not apply to persons whose sole function is legal counsel presenting the agency position. Accordingly, Mr. Hochman's name is removed from the list of persons who may not receive ex parte communications.

Dated: November 4, 1976.

JACK W. GEHRINGER,
Deputy Director,

National Marine Fisheries Service.

[FR Doc.76-32939 Filed 11-8-76;8:45 am]

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ruary 4, 1977, unless otherwise ordered by the Board, and that no change be made therein during the period of suspension, except by order or special permission of the Board; and

2. Copies of this order shall be filed with the tariffs and served upon Braniff Airways, Inc.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 76-32932 Filed 11-8-76; 8:45 am]

[Docket 29056]

GLOBUS-GATEWAY TOURS, LTD.

Foreign Indirect Air Carrier Renewal and Amendment (Swiss); Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on December 1, 1976, at 10:00 a.m. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served on September 24, 1976, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., November 3, 1976.

RONNIE A. YODER,
Administrative Law Judge.

[FR Doc. 76-32929 Filed 11-8-76; 8:45 am]

[Docket 29968]

LOUISVILLE SERVICE CASE

Prehearing Conference

Notice is hereby given that a prehearing conference in this proceeding is assigned to be held on January 6, 1977, at 9:30 a.m. (local time), in Room 1003, Hearing Room A, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge William H. Dapper.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and six copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before December 8, 1976, and the other parties on or before December 20, 1976. The submissions of the other parties shall be limited to points on which they differ with the Bureau, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., November 3, 1976.

ROSS I. NEWMANN,
Chief Administrative Law Judge.

[FR Doc. 76-32930 Filed 11-8-76; 8:45 am]

[Docket 27918 Order 76-11-15]

NORTH ATLANTIC FARES INVESTIGATION

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 4th day of November 1976.

By Order 75-6-42, dated June 9, 1975, the Board instituted an investigation of the North Atlantic fare structure for scheduled passenger service. The order required the U.S.-flag carriers to submit certain reports on a quarterly basis, including data showing passengers enplaned, revenue passenger-miles, and passenger revenue for each fare category, by month. Because these data were being compiled and presented differently by the carriers, a meeting was held between the U.S. carriers and the Bureau of Economics on February 3, 1976. It developed at the meeting that the reports of Pan American World Airways, Inc. (Pan Am), were inconsistent with those of the other carriers. Specifically, Pan Am's data reflected only coupon traffic across the Atlantic, and did not include intra-Europe data or U.S.-Europe traffic beyond the European gateways. The Bureau sent a letter to Pan Am on March 1, 1976, requesting that Pan Am conform its reports to the methodology employed by the other carriers, which reflected both traffic carried across the Atlantic and intra-Europe traffic, including stop-over traffic, inter- and intra-carrier connecting traffic, and Fifth Freedom Traffic. In its subsequent reports Pan Am did not comply with this request, and it has indicated orally to the Bureau staff that it believes its methodology to be consistent with the intent of the Board's order.

Upon consideration of the various methodologies, we have decided that the reports of the other carriers are consistent with the intent of Order 75-6-42, and that Pan Am's reports do not comply with that order. The order is clear that the statistical data to be submitted would be "coextensive with the scope of the investigation", which encompasses the total North Atlantic operations of the carriers.¹

Data relating only to trans-Atlantic services is not reconcilable with total Form 41 revenue and traffic data, and does not match the other financial reports submitted by Pan Am pursuant to Order 75-6-42. The use of Pan Am's trans-Atlantic traffic data in this investigation would produce distorted results, particularly with respect to fare yields, which must be calculated on the basis of the revenue derived from all

¹ The data excludes only charter services, all-cargo operations, and intra-Germany and mid-Atlantic services.

North Atlantic passengers and not just those that are carried across the ocean. Consequently, Pan Am will be required to revise its previous monthly reports to reflect total North Atlantic operations, as described above and in the March 1, 1976, letter from the Bureau of Economics, and to conform all subsequent reports to this methodology.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 407(a), and 1002 thereof,

It is ordered, That: 1. Pan American World Airways, Inc., shall be and it hereby is ordered to revise its responses to ordering paragraph 4 of Order 75-6-42, and to submit future responses, such that the information regarding passengers enplaned, revenue passenger-miles, and passenger revenue for each fare category will reflect Pan American's total North Atlantic operations, both trans-Atlantic and intra-European, including stop-over traffic, inter- and intra-carrier connecting traffic, and Fifth Freedom Traffic.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 76-32933 Filed 11-8-76; 8:45 am]

[Docket 29525; Order 76-11-9]

SUBSTITUTION OF OTHER SERVICES FOR AIR TRANSPORTATION ON THE U.S. SECTORS OF INTERNATIONAL FREIGHT ROUTINGS

Petition and Order To Show Cause

Adopted by the Civil Aeronautics Board, at its office in Washington, D.C., on the 3rd day of November 1976.

On July 16, 1976, a petition was filed by American Airlines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., and Trans World Airlines, Inc. (hereinafter called petitioners), which requests the Board either to institute an investigation of the practice of substituting alternate modes of transportation for air transportation on U.S. segments of international all-air freight movements or to grant other appropriate relief, for example, extending to the U.S. segments of international all-air freight movements the rules on substitute service as enunciated in the Substitution of Other Service for Air Transportation Rule Proceeding, Order 75-3-37, March 12, 1975.

In support of their petition, the petitioners argue that substitute service is virtually without restriction on the domestic portion of international freight movements, and that this has resulted in a deceptive practice in which carriers frequently charge air rates for freight shipments to interior U.S. points, but ship the domestic leg by surface mode. This practice, the petitioners argue, in many cases results in a decline in service quality for shippers along with an excessively high charge, and a decrease

in revenue for domestic carriers who would normally carry the traffic on the domestic portion of the movement.

The petitioners argue that, because IATA has consistently failed to set acceptable rules for intermodal freight, the Board should either institute an investigation of the practice or extend the rules for substitute transportation applicable within the United States to the domestic portion of international operations. While they acknowledge that in certain instances, the use of trucks at air-freight rates is beneficial to the shipping public, they argue that rules need to be established to ensure that such practices are not abused.

Upon full consideration of the petition, and other relevant matters, we tentatively conclude that we should extend, to substitute service performed on the domestic portion of international movements, the rules and procedures delineated in Order 75-3-37 relating to substitute service within the United States. We invite all interested parties to show cause why our tentative conclusion should not be made final.

While we had hoped that IATA would establish reasonable rules on substitute freight service, we cannot ignore the fact that since September of 1975, when IATA Resolution 507b expired, no IATA agreement on the matter has been reached despite numerous meetings on the subject. Given the obvious abuses that can occur without proper rules, such as deceptive practices, declining service quality, and higher costs to shippers, steps need to be taken to resolve the issue. Since the Board has fully investigated the matter in domestic service, and since the same issues are involved on international movements with a domestic U.S. leg, adoption of the domestic rules appears to be appropriate. Having fully considered the domestic substitute service rules and reached our conclusions after notice and full hearing, we believe those same rules can appropriately be applied to domestic movements which happen to be a leg of an international shipment.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958 and particularly sections 204(a), 403 404(a), 412, 414, and 1002(f) thereof,

It is ordered, That: 1. All interested parties are directed to show cause why the substitute service rules enunciated in Order 75-3-37, March 12, 1975, should not be made applicable to the domestic portions of international freight movements;

2. Further procedures shall be in accordance with the Rules of Practice, 14 CFR, Part 302, and if there is any objection to the findings and conclusions proposed herein, notice thereof shall be filed within 10 days after the date of service of this order, and if notice is filed, written answer and supporting documents shall be filed within 30 days after the date of service of this order;

3. Any responses to the foregoing answers shall be filed within 45 days from the date of service of this order;

4. If notice of objection is not filed within 10 days, or if notice is filed and answer is not filed within 30 days after service of this order, or if an answer timely filed raises no material issue of fact, all persons shall be deemed to have waived the right to a hearing and all other procedural steps, and the Board may enter an order incorporating the findings and conclusions proposed herein; and

5. This order shall be served upon the International Air Transport Association, all U.S. certificated air carriers, and all foreign air carriers.

This order shall be published in the **FEDERAL REGISTER**.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-32931 Filed 11-8-76;8:45 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Authority to Make A Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Under Secretary, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to
the Commissioners.

[FR Doc.76-32774 Filed 11-8-76;8:45 am]

DEPARTMENT OF COMMERCE

Bureau of the Census ANNUAL SURVEYS IN MANUFACTURING AREA Notice of Consideration

Notice is hereby given that the Bureau of the Census is considering a proposal to continue or initiate the annual surveys listed below for the year 1976 and for each year thereafter, under the authority of title 13, United States Code, sections 182, 224, and 225. These surveys, most of which have been conducted for many years, are significant in the manufacturing area; and on the basis of information and recommendations received by the Bureau of the Census, the data have significant application to the needs of the public and industry and are not available from nongovernmental or other governmental sources.

The establishments covered by these surveys directly account for the bulk of all manufacturing employment. The information to be developed from these surveys is necessary for an adequate measurement of total industrial production. Government agencies need data on the output of these industries. Manufac-

turers in the industries involved, as well as their suppliers and customers and the general public, have all requested such data in the interest of business efficiency and stability.

Such surveys, if conducted, shall begin not earlier than December 9, 1976.

Report forms in most instances furnishing data on shipments and/or production and in some instances on stocks, unfilled orders, orders booked, consumption, etc., will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys.

The surveys have been arranged under major group headings shown in the Standard Industrial Classification Manual (1972 edition) promulgated by the Office of Management and Budget for the use of Federal statistical agencies.

MAJOR GROUP 22—TEXTILE MILL PRODUCTS

Broadwoven goods finished
Narrow fabrics
Yarn production

MAJOR GROUP 23—APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS

Gloves and mittens
Apparel
Brassieres, corsets, and allied garments

MAJOR GROUP 24—LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE

Hardwood plywood
Softwood plywood
Lumber

MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS

Pulp, and detailed grades of paper and board

MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS

Sulfuric acid
Industrial gases
Inorganic chemicals
Pharmaceutical preparations, except biologicals

MAJOR GROUP 29—PETROLEUM REFINING AND RELATED INDUSTRIES

Asphalt and tar roofing and siding products

MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS

Rubber
Plastics products

MAJOR GROUP 31—LEATHER AND LEATHER PRODUCTS

Shoes and slippers (by method of construction)

MAJOR GROUP 32—STONE, CLAY AND GLASS

Consumer, scientific, technical, and industrial glassware
Fibrous glass

MAJOR GROUP 33—PRIMARY METAL INDUSTRIES

Steel mill products
Insulated wire and cable
Magnesium mill products

MAJOR GROUP 34—FABRICATED METAL PRODUCTS EXCEPT ORDNANCE, MACHINERY, AND TRANSPORTATION EQUIPMENT

Commercial steel forgings
Steel power boilers
Heating and cooking equipment

MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL

Internal combustion engines
Tractors

Farm machines and equipment
Mining machinery and equipment
Refrigeration and air-conditioning equipment, including warm air furnaces
Office, computing, and accounting machines
Pumps and compressors
Selected industrial air pollution control equipment
Construction machinery

MAJOR GROUP 36—ELECTRICAL MACHINERY, EQUIPMENT, AND SUPPLIES

Radlos, televisions, and phonographs
Motors and generators
Wiring devices and supplies
Switchgear, switchboard apparatus, relays, and industrial controls
Selected electronic and associated products, including telephone and telegraph apparatus
Electric housewares and fans
Electric lighting fixtures
Major household appliances

MAJOR GROUP 37—TRANSPORTATION EQUIPMENT

Aircraft propellers

MAJOR GROUP 38—PROFESSIONAL, SCIENTIFIC, AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC AND OPTICAL GOODS; WATCHES AND CLOCKS

Selected instruments and related products
Atomic energy products and services

The following list of surveys represents annual supplements of monthly and quarterly surveys and will cover the same establishments canvassed in the monthly or quarterly survey. There will be no duplication of reporting, however, since the type of data collected on the annual supplement will be different from that collected in the more frequent surveys.

MAJOR GROUP 32—STONE, CLAY, AND GLASS
Glass containers

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments which are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS

Flour milling products
Margarine manufacturer's—packaging operations

MAJOR GROUP 22—TEXTILE MILL PRODUCTS

Cotton, manmade fiber, woolen, and worsted fabrics
Finishing plant report—broadwoven fabrics
Broadwoven gray goods (cotton, wool, and manmade)
Consumption of wool and other fibers, and production of tops and noils
Carpet and rugs
Knit fabric production

MAJOR GROUP 23—APPEAL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS

Sheets, pillowcases and towels

MAJOR GROUP 25—FURNITURE FIXTURES

Mattresses and bedsprings

MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS

Converted flexible packaging products

MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS

Phosphatic fertilizer materials
Paint, varnish, and lacquer

MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PRODUCTS

Plastic bottles

MAJOR GROUP 32—STONE, CLAY, AND GLASS

Flat glass
Glass containers
Refractories
Clay construction products

MAJOR GROUP 33—PRIMARY METAL INDUSTRIES

Nonferrous castings
Iron and steel foundries
Steel inventories (Consumers and Producers Report)
Copper inventories

MAJOR GROUP 34—FABRICATED METAL PRODUCTS EXCEPT ORDNANCE, MACHINERY, AND TRANSPORTATION EQUIPMENT

Plumbing fixtures
Metal cans
Steel shipping drums and pails
Closures for containers

MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL

Construction machinery

MAJOR GROUP 36—ELECTRICAL MACHINERY, EQUIPMENT, AND SUPPLIES

Electric lamps
Fluorescent lamp ballasts

MAJOR GROUP 37—TRANSPORTATION EQUIPMENT

Aircraft engines
Complete aircraft
Backlog of orders for aircraft, space vehicles, missiles, engines and selected parts
Truck trailers

The annual survey of manufactures will be conducted and will call for general statistical data such as employment, payroll, man-hours, capital expenditures, cost of materials consumed, gross book value of fixed assets, rental payments, supplemental labor costs, etc., in addition to information on value of products shipped for classes of products and quantity and cost of selected fuels used. This survey, while conducted on a sample basis, will cover all manufacturing industries including data on plants under construction but not in operation.

A survey of research and development costs will be conducted also. The major data to be obtained will include total research and development costs of work performed by the company, distributed by source of funds, type of expenditures, product field, and of research and geographic State where the research is performed. Data will also be obtained on the number of scientists and engineers employed and, for comparative purposes, total net sales and receipts, and total employment of the company.

A survey on shipments to, or receipts for work done for, Federal Government agencies and their contractors and suppliers is planned to provide information on the impact of Federal procurement on selected industries and on the economy of States, standard metropolitan statistical areas, and geographic regions.

The annual survey of oil and gas will canvass the industry which provides

most of the fuel consumed in the United States, as well as a substantial portion of the raw material requirement of many industries. The survey will collect information on exploration, development, production costs, revenues, expenditures and assets in the crude petroleum and natural gas industry.

The annual survey on pollution abatement expenditures is designed to collect from the manufacturing area total expenditures made by industry to abate pollutant emissions. The survey covers current operating costs and capital expenditures made by industry to reduce pollution in its air, water or solid forms. It will also obtain the costs recovered from abatement activities and quantities of pollutants abated.

The survey of plant capacity will call for general statistical data such as number of shifts, or the number of production workers for actual, preferred and practical operating rates, as well as direct information on the operation rates, the reasons for operating at less than capacity, and the length of time required to reach and to maintain practical rates. The survey will be done on a sample basis and cover all manufacturing industries.

Copies of the proposed forms are available on request to the Acting Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the subject matter of these proposed surveys should be submitted in writing to the Acting Director of the Bureau of the Census on or before December 9, 1976 and will receive consideration.

Dated: November 4, 1976.

ROBERT L. HAGAN,
Acting Director,
Bureau of the Census.

[FR Doc. 76-32927 Filed 11-8-76; 8:45 am]

Domestic and International Business Administration

NATIONAL INDUSTRIAL ENERGY COUNCIL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975) notice is hereby given that the meeting of the National Industrial Energy Council will be held on Wednesday, December 8, 1976, from 1:15 pm to 3:15 pm in Conference Room 4830, Main Commerce Building, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

The Council will report and advise the Secretary of Commerce on programs and problems within the industrial and commercial sectors relating to energy conservation; provide a forum for the exchange of views on conservation between government and the industrial/commercial sectors; advise on policies, plans and actions of government agencies involving energy use and conservation. The Council may identify and evaluate cur-

rent and potential energy conservation plans within industry.

Agenda items are as follows:

1. Opening remarks by the Secretary of Commerce.
2. Reports by Sub-Councils.
 - a. Business Awareness.
 - b. Industry Programs.
 - c. Program Development.
3. Open discussion.
4. Closing remarks by the Secretary of Commerce.

The meeting is open to public attendance and a limited number of seats will be available on a first-come, first-serve basis. To the extent that time permits, members of the public may present oral statements to the Council. Interested persons are also invited to file written statements with the Council before or after the meeting. Copies of the minutes will be available 30 days after the meeting upon written request addressed to the DIBA Freedom of Information Officer, Freedom of Information Control Desk, Room 3100, U.S. Department of Commerce, Washington, D.C. 20230.

Inquiries should be addressed to Ms. Evelyn McKessey, Office of Energy Programs, DIBA, Room 2211, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. 20230. Telephone 202-377-5001.

Dated: November 3, 1976.

R. DENNIS O'CONNELL,
Executive Director,
National Industrial Energy Council.

[FR Doc. 76-32974 Filed 11-8-76; 8:45 am]

NATIONAL INDUSTRIAL ENERGY COUNCIL, PROGRAM DEVELOPMENT SUB-COUNCIL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975) notice is hereby given that the meeting of the Sub-Council on Program Development of the National Industrial Energy Council will be held on Friday, December 3, 1976, from 2:30 PM to 4:30 PM in Conference Room 4830, Main Commerce Building, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

The Sub-Council will meet to discuss its progress toward meeting the objectives of the Sub-Council and to prepare a report to be submitted at the next full Council meeting.

The meeting is open to public attendance and a limited number of seats will be available on a first-come, first-serve basis. To the extent that time permits, members of the public may present oral statements to the Sub-Council. Interested persons are also invited to file written statements with the Sub-Council before or after the meeting. Copies of the minutes will be available 30 days after the meeting upon written request addressed to the DIBA Freedom of Information Officer, Freedom of Information Control Desk, Room 3100, U.S. Department of Commerce, Washington, D.C. 20230.

Inquiries should be addressed to Ms. Evelyn McKessey, Office of Energy Programs, DIBA, Room 2211, Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. 20230 Telephone 202-377-5001.

Dated: November 3, 1976.

R. DENNIS O'CONNELL,
Executive Director,
National Industrial Energy Council.
[FR Doc. 76-32975 Filed 11-8-76; 8:45 am]

Maritime Administration SLOW SPEED DIESEL ENGINES FOR SHIP PROPULSION Domestic Manufacture

By notice published in the FEDERAL REGISTER on May 7, 1976, (41 FR 18896) the Maritime Administration ("MarAd") announced, as a matter of policy, "it, for a period of time reasonably required for the development of domestic sources for [slow speed diesel engines], will not withhold approval, for purposes of Title V Construction-Differential Subsidy, of vessel designs incorporating slow speed diesels solely on the basis of the presence of foreign components therein." However, certain conditions were placed upon the use of such components—the manufacturer will develop a slow speed diesel containing entirely domestic components within a reasonable period of time and submit its development plan for review and agreement to the MarAd Office of Ship Construction, the aggregate cost of foreign components will not exceed 60 percent of the cost of each unit, foreign items may not be used where domestically manufactured equivalents are available and subsequent units produced during the development period should contain foreign components to a decreasing degree.

Comments and a memorandum of law in the nature of a Petition for Reconsideration questioning the authority of MarAd to waive the "Buy American" provisions of section 505 of the Merchant Marine Act, 1936, as amended, have been received from certain domestic propulsion equipment manufacturers.

MarAd has determined to afford all U.S. shipbuilders, ship purchasers, propulsion equipment manufacturers and other interested parties an opportunity to comment on the prior policy determination and the submittals received to date. All comments are to be filed with the Secretary, Maritime Administration, Room 3099-B, Department of Commerce Building, Washington, D.C. 20230, by December 10, 1976. A copy of previous submittals may be reviewed in that office also. Upon review of all comments received, the MarAd staff will make a recommendation to the Maritime Subsidy Board ("Board"), a copy of such report being forwarded to all commenting parties. All interested parties may have 30 days thereafter to submit responses to the aforesaid recommendation. Within a

reasonable period of time the Board will publish an Order setting forth the basis for its decision with respect to the request(s) for reconsideration and will publish in the Federal Register the conclusions of its final determination.

For further information contact William G. Bullock, Chief, Division of Engineering, Office of Ship Construction, Room 4525, Department of Commerce Building, Washington, D.C. 20230 (tel. (202) 377-3488).

By Order of the Maritime Subsidy Board, Maritime Administration.

Dated: November 3, 1976.

JAMES S. DAWSON,
Secretary.

[FR Doc. 76-32978 Filed 11-8-76; 8:45 am]

COMMERCE TECHNICAL ADVISORY BOARD Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that the Commerce Technical Advisory Board will hold a meeting on Tuesday, November 30, 1976, from 10 a.m. to 5 p.m. and Wednesday, December 1, 1976, from 8:30 a.m. to 12 Noon, in Room 6802 of the Main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, D.C. (Public entrance to the building is on 14th Street, between Constitution and E Street, NW).

The Board was established to study and evaluate the technical activities of the Department of Commerce and recommend measures to increase their value to the business community.

The entire meeting will be devoted to a further discussion of "The Role of Technological Innovation in U.S. Productivity, Foreign Trade, and General Welfare of Society."

The meeting will be open to public observation. The public may submit written statements or inquiries to the Chairman before or after the meeting. A limited number of seats will be available to the public and to the press on a first-come first-serve basis.

Copies of minutes or tape and materials distributed will be made available for reproduction, following certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the U.S. Department of Commerce Central Reference and Inspection Facility, Washington, D.C. 20230.

Further information may be obtained from Mrs. Florence S. Feinberg, Administrator, Room 3865, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-5065.

Dated: November 2, 1976.

BETSY ANCKER-JOHNSON,
Assistant Secretary for
Science and Technology.

[FR Doc. 76-32827 Filed 11-8-76; 8:45 am]

COMMUNITY SERVICES ADMINISTRATION

[CSA Notice 6143-1]

EMERGENCY ENERGY CONSERVATION PROGRAM

Amendment to Submission of Funding Plans

The purpose of this notice is to amend the notice filed in FR Doc. 76-31287 on Wednesday, October 27, 1976 on the same subject in order to clarify the agency's intent vis-a-vis funding SEOO's for resource mobilization. In such cases the policy of the Community Services Administration is that the SEOO must mobilize an amount, in cash or its equivalent, equal to the funding received, for support to operating projects at the local level within the state, so that the result of funding the SEOO will not be a net reduction of program effort at the local level. Therefore, the word "cash" is being deleted from the notice filed October 27 in recognition of the fact that a strict interpretation could in many cases mean that SEOOs would be dependent on State legislatures for actual appropriations in order to meet the requirement, which was not the intent. In addition, an exclusive requirement for cash would reduce the quality and legitimate quantity of non-CSA mobilized resources. At the same time the word "local" is being added as a modifier of "program" in the same sentence indicating that the support mobilized is to be to the local programs.

In FR Doc. 76-31287 published in the FEDERAL REGISTER, Wednesday, October 27, 1976 on page 47096, column 2, item 3.c., paragraph IV, the second sentence is revised to read as follows:

The plan may provide for funding of the SEOO for such program support activities in an amount not to exceed ten percent of the total allocation on condition that the SEOO mobilize at least an equal amount in non-CSA/FEA support for local programs within the state beyond the non-Federal share already required.

AUTHORITY: The provisions of this notice issued under sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

Effective: November 9, 1976.

ROBERT C. CHASE,
Deputy Director.

[FR Doc. 76-32831 Filed 11-8-76; 8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

NOVEMBER 3, 1976.

The USAF Scientific Advisory Board Aeromedical-Biosciences Panel will hold a meeting on December 3, 1976 from 9:00 a.m. to 5:00 p.m. at the University of Texas, Health Sciences Center, Houston, TX.

The Panel will plan and discuss organizational details and specific tasks for 1977.

The meeting will be open to the public. For further information contact the Scientific Advisory Board Secretariat at (202) 697-4648.

FRANKIE S. ESTEP,
Air Force Federal Register
Liaison Officer, Directorate of
Administration.

[FR Doc. 76-32893 Filed 11-8-76; 8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[PF 53; (FRL 641-5)]

AMCHEM PRODUCTS, INC., ET AL.

Pesticide and Food Additive Petitions; Filing

Pursuant to the provisions of sections 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency gives notice that the following petitions have been submitted to the Agency for consideration.

PP6F1870. Amchem Products, Inc., Brookside Ave., Ambler PA 19002. Proposes that 40 CFR 180.300 be amended by the establishment of a tolerance for residues of the plant regulator ethephon ((2-chloroethyl) phosphonic acid) in or on the raw agricultural commodity grapes at 1.0 part per million (ppm). Proposed analytical method for determining residues is a procedure in which the residues are esterified with diazomethane and then analyzed by gas chromatography using a phosphorus-specific alkali thermionic detector. PM25 202/426-2632

FAP6H5152. Amchem Products, Inc. Proposes that 21 CFR 193 be amended by the establishment of a regulation permitting the use of the plant regulator ethephon ((2-chloroethyl) phosphonic acid) on the commodity grapes with a tolerance limitation of 5 ppm for residues resulting in the processed foods grape juice, grape wine, and grape pomace. PM25 202/755-2632

PP6F1875. FMC Corp., 100 Niagara St., Middleport NY 14105. Proposes that 40 CFR 180.254 be amended by lowering the existing tolerance for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-N-methylcarbamate), its carbamate metabolite (2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-N-methylcarbamate, and the phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol, in or on the raw agricultural commodity potatoes from 2 ppm (of which not more than 1 ppm is carbamates) to 1.3 ppm of which not more than 0.5 ppm is carbamates. Proposed analytical method for determining residues is by using nitrogen specific microcoulometric gas chromatography. PM12 202/755-9315

FAP5H5151. Mobay Chemical Corp., P.O. Box 4913, Hawthorn Rd., Kansas City Mo. 64120. Proposes that 21 CFR 193.25 and 561.41 be amended by the establishment of regulations permitting the use of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one its triazinone metabolites on the commodity sugarcane with a tolerance limitation of 2.0 ppm in sugarcane molasses and 0.5 ppm in sugarcane bagasse. PM25 202/426-2632.

Interested persons are invited to submit written comments on any petitions referred to in this notice to the Federal

Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Room 401, East Tower, 401 M St. SW, Washington, DC 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. Inquiries concerning specific petitions referred to in this notice may be directed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the number of the petition to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: October 28, 1976.

JOHN B. RITCH, Jr.,
Director,
Registration Division.

[FR Doc. 76-32805 Filed 11-8-76; 8:45 am]

[FRL 641-3; (OPP-42025A)]

ARKANSAS

Approval of State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 et. seq.) and implementing regulations of 40 CFR Part 171 require each State desiring to certify applicators to submit a plan for its certification programs. Any state certification program under this section shall be maintained in accordance with the State Plan approved under this section.

On July 30, 1976, notice was published in the FEDERAL REGISTER (41 FR 31940) of the intent of the Regional Administrator, Environmental Protection Agency (EPA) Region VI, to approve the Arkansas State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides (Arkansas State Plan).

Complete copies of the Arkansas State Plan, except for sample examinations, were made available for public inspection at the Arkansas State Plan Board, Division of Feed, Fertilizers and Pesticides, Little Rock, Arkansas; Pesticides and Hazardous Materials Branch, Air and Hazardous Materials Division, EPA Region VI, Dallas, Texas; and the Federal Register Section, Technical Services Division, Office of Pesticide Programs, EPA Headquarters, Washington, D.C.

There were no comments received concerning the State Plan during the 30 day comment period.

The Arkansas State Plan will remain available for public inspection at the Arkansas State Plan Board, Division of

Feed, Fertilizers and Pesticides, Little Rock, Arkansas.

It has been determined that the Arkansas State Plan satisfies the requirements of section 4(a)(2) of amended FIFRA and of 40 CFR Part 171. Accordingly the Arkansas State Plan is hereby approved.

Dated: October 13, 1976.

J. PAUL COMOLA,
Acting Regional Administrator,
EPA, Region VI.

[FR Doc.76-32802 Filed 11-8-76;8:45 am]

[FRL 639-5]

CHLOROFLUOROCARBONS

Formation of Chlorofluorocarbon Working Group; Public Meeting; Solicitation of Comments

In June 1974, a theory was presented which suggested that the continued release of chlorofluorocarbons at current or projected expanding rates would at some time in the next 50-100 years result in a significant depletion of stratospheric ozone. Stratospheric ozone absorbs incoming ultraviolet radiation from the sun, particularly in that region of the spectra associated with adverse biological effects, notably skin cancer. The absorption of ultraviolet radiation by stratospheric ozone also participates in establishing the temperature distribution of the stratosphere which may be an essential factor in weather and climate patterns. The preponderance of investigations since 1974, including a National Academy of Sciences study published in September 1976, have supported the ozone depletion predictions and recognize the eventual need for some form of limitations on the continued release of chlorofluorocarbons.

Accordingly, the Agency has initiated a Work Group to study chlorofluorocarbons with the intent to develop proposed regulations by April 1977, for phasing out nonessential aerosol uses of F-11, F-12, and other chlorofluorocarbons. The Agency also will examine, by June 1978, environmental risks, benefits, and substitute availabilities related to other uses of chlorofluorocarbons. Such a program would have both environmental impact, by abating the depletion of ozone, and economic impact, by affecting manufacturers and users of chlorofluorocarbons and aerosol products. Interested persons are invited to participate in Agency efforts by submitting written data, opinion, or arguments.

Communication on these or any other aspects of this program should be submitted to: The Environmental Protection Agency, Office of Toxic Substances (WH-557), 401 "M" Street, SW, Washington, DC, 20460, Attention: Mr. George F. Wirth.

For the purpose of obtaining additional information from interested persons, the Agency will hold a series of public meetings. The first meeting will be held on December 3, 1976, at the Environmental Protection Agency, Waterside Mall, 401 M Street, S.W., Washington,

D.C. 20460, Room 2117 from 10 a.m. to 4:30 p.m. At this meeting, the Agency is particularly interested in obtaining information on likely alternatives to the use of chlorofluorocarbons F-11 and F-12 in aerosols and the attendant environmental and economic considerations. A second meeting to discuss nonessential aerosol uses will be held in mid-January, 1977.

Dated: November 3, 1976.

RUSSELL E. TRAIN,
Administrator.

[FR Doc.76-32970 Filed 11-8-76;8:45 am]

[FRL 641-4 (OPP-42029A)]

NEW MEXICO

Approval of State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 et seq.) and implementing regulations of 40 CFR Part 171 require each State desiring to certify applicators to submit a plan for its certification programs. Any state certification program under this section shall be maintained in accordance with the State Plan approved under this section.

On August 20, 1976, notice was published in the FEDERAL REGISTER (41 FR 35214) of the intent of the Regional Administrator, Environmental Protection Agency (EPA) Region VI, to approve the New Mexico State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides (New Mexico State Plan).

Complete copies of the New Mexico State Plan, except for sample examinations, were made available for public inspection at the New Mexico Department of Agriculture, Office of the Director, New Mexico Department of Agriculture Building, Las Cruces, New Mexico; Pesticides and Hazardous Materials Branch, Air and Hazardous Materials Division, EPA Region VI, Dallas, Texas; and the Federal Register Section, Technical Services Division, Office of Pesticide Programs, EPA Headquarters, Washington, D.C.

There were no comments received concerning the State Plan during the 30 day comment period.

The New Mexico State Plan will remain available for public inspection at the New Mexico Department of Agriculture, Office of the Director, New Mexico Department of Agriculture Building, Las Cruces, New Mexico.

It has been determined that the New Mexico State Plan satisfies the requirements of section 4(a)(2) of amended FIFRA and of 40 CFR Part 171. Accordingly the New Mexico State Plan is hereby approved.

Dated: October 13, 1976.

J. PAUL COMOLA,
Acting Regional Administrator,
EPA, Region VI.

[FR Doc.76-32803 Filed 11-8-76;8:45 am]

[OPP-33000/474; FRL 641-5A]

RECEIPT OF APPLICATION FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (39 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended ["Interim Policy Statement"]. On January 22, 1976, EPA published in the FEDERAL REGISTER a document entitled "Registration of a Pesticide Product—Consideration of Data by the Administrator in Support of an Application" [41 FR 3339]. This document described the changes in the Agency's procedures for implementing section 3(c)(1)(D) of FIFRA, as set out in the Interim Policy Statement, which were effectuated by the enactment of the recent amendments to FIFRA on November 28, 1975 [Pub. L. 94-140], and the new regulations governing the registration and re-registration of pesticides which became effective on August 4, 1975 [40 CFR Part 162].

Pursuant to the procedures set forth in these FEDERAL REGISTER documents, EPA hereby gives notice of the applications for pesticide registration listed below. In some cases these applications have recently been received; in other cases, applications have been amended by the submission of additional supporting data, the election of a new method of support, or the submission of new "offer to pay" statements.

In the case of all applications, the labeling furnished by the applicant for the product will be available for inspection at the Environmental Protection Agency, Room 209, East Tower, 401 M Street, S.W., Washington, D.C. 20460. In the case of applications subject to the new section 3 regulations, and applications not subject to the new section 3 regulations which utilize either the 2(a) or 2(b) method of support specified in the Interim Policy Statement, all data citations submitted or referenced by the applicant in support of the application will be made available for inspection at the above address. This information (proposed labeling and, where applicable, data citations) will also be supplied by mail, upon request. However, such a request should be made only when circumstances make it inconvenient for the inspection to be made at the Agency offices.

Any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after January 1, 1970, is being used to support an application described in this notice, (c) desires to assert a claim under section 3(c)(1)(D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data or the status of such data under section 10 must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by

certified mail. Notification to the Administrator should be addressed to the Product Control Branch, Registration Division (WH-567), Office of Pesticide Programs, Environmental Protection Agency 401 M St. SW, Washington, D.C. 20460. Every such claimant must include, at a minimum, the information listed in the Interim Policy Statement of November 19, 1973.

Specific questions concerning applications made to the Agency should be addressed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone as follows:

PM 11, 12, & 13—202/755-9315
PM 21 & 22—202/426-2454
PM 24—202/755-2196
PM 31—202/426-2635
PM 33—202/755-9041
PM 15, 16, & 17—202/426-9425
PM 23—202/755-1397
PM 25—202/426-2632
PM 32—202/426-9486
PM 34—202/426-9490

The Interim Policy Statement requires that claims for compensation be filed within 60 days of publication of this notice. With the exception of 2(c) applications not subject to the new Section 3 regulations, and for which a sixty-day hold period for claims is provided, EPA will not delay any registration pending the assertion of claims for compensation or the determination of reasonable compensation. Inquiries and assertions that data relied upon are subject to protection under section 10 of FIFRA, as amended, should be made on or before January 10, 1977.

Dated: October 28, 1976.

JOHN B. RITCH, JR.,
Director,
Registration Division.

APPLICATIONS RECEIVED (OPP-33000/474)

EPA File Symbol 32043-R. The Swimming Pool Doctor, Inc., 1322 N. Mills Ave., Orlando FL 32803. SODIUM HYPOCHLORITE. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 32108-R. Frontier Pools, Inc., East Amherst NY 14501. POOL CLEAR SHOCK TREATMENT SODIUM HYPOCHLORITE. Active Ingredients: Sodium Hypochlorite 12.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 32338-R. A to Z Products Co., PO Box 8, Dunedin FL 33528. A TO Z CHLOR. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 33003-R. Great Western Chemical Co., 11440 SW Teldeman, Portland OR 97223. G. W. SANI-CLEAN. Active Ingredients: Sodium Hypochlorite 12.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 33794-R. Manatee Paver, Inc., 42 49th St., E., Bradenton FL 33505. MANATEE CHLOR. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 34632-R. Supreme Chemicals, 989 Landess Ave., Milpitas CA 95035. DESERT BRAND. Active Ingredients: Sodium Hypochlorite 12.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 34751-L. Encee Chemical Sales, PO Box 39, New Bern NC 28560. SODIUM HYPOCHLORITE. Active Ingredients: Sodium Hypochlorite 12.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 35927-R. Pet-Lita Co., 35 Atlantic St., Garfield NJ 07026. PET-LITA. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 0.025%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 0.025%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 35969-G. The L. A. Lux Co., Cleveland OH 44113. MICROBIOCIDE #850. Active Ingredients: 1-Hydroxyethyl-1-Benzyl-2-Alkyl (as in fatty acids derived from coconut oil) Imidazo-linium Chloride 10%; Isopropyl Alcohol 10%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 36739-G. Sinton Supply Co., Inc., 204 E. Sample St., South Bend IN 46618. SINCO SANI-CIDE. Active Ingredients: Sodium Hypochlorite 12.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 37296-E. Product-Sol, Inc., 2010 Cole Ave., Birmingham MI 48008. BIODERM 400. Active Ingredients: 2,2-Dibromo - 3 - nitrilopropionamide 10%. Method of Support: Application proceeds under 2(c) of interim policy. PM34

EPA File Symbol 37599-R. Brandon Pool Supply, 332 E. Brandon Blvd., Brandon FL 33511. POOL SHOK. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 37608-R. Jarvis & Spitz, 425 Stone Rd., Rochester NY 14616. AQUA-KLOR. Active Ingredients: Sodium Hypochlorite 12.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 37609-R. Wonder Products, Mill St., Ashland NH 03217. WONDER PRODUCTS. Active Ingredients: Sodium Hypochlorite 12.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 37667-R. Gordons Pool Service, 4632A Del Prado Blvd., Cape Coral FL 33904. GORDONS CRYSTAL ADE. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38031-E. Tropical Recreation Products, Inc., 2410 State Rd. 580, Clearwater FL 33519. SODIUM HYPOCHLORITE. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38330-G. Arco/Chemical Co., 1500 Market St., Philadelphia PA 19101. ARCOCIDE R-631. Active Ingredients: Alkyl (C14 60%, C12 25%, C16 15%) dimethyl benzyl ammonium chloride 28%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 38346-R. The Ultra-White Co., Box 1973, Roanoke VA 24009. BRIGHT WHITE SOFT. Active Ingredients: isobutyl phenoxy ethoxy ethyl dimethyl benzyl ammonium chloride monohydrate 5%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 38453-R. Citizens Oil Co., 377 Pine St., Burlington VT 05401. CIT-CHLOR. Active Ingredients: Sodium Hypochlorite 12.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38521-R. Campbell Industries Corp., 804 Heaton St., Hamilton OH 45011. CAM-I-CIDE FOOD PROCESSING AREA SANITIZER. Active Ingredients: Alkyl (C12 40%, C14 50%, C16 10%) dimethyl benzyl ammonium chloride 10.0%; Ethanol 2.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 38529-R. Acme Welding Supply Co., Box 2188, Fargo ND 58102. 12.50 BOTTLED SUNSHINE. Active Ingredients: Sodium Hypochlorite 12.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38537-R. Troy Pools, 5332 S. Cleveland Ave., Fort Myers FL 33901. TROY SPECIAL. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38538-R. Triton Pools, Inc., 3051 Hanson St., Fort Myers FL 33901. TRITON B. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38695-R. Property Management & Maintenance Co., Palm State Pools, 3912 Cleveland Ave., Fort Myers FL 33901. SODIUM HYPOCHLORITE. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38696-R. Multi-Products, Inc., 312 E. Venice Ave., Venice FL 33595. MULTI-PRODUCTS' SODIUM HYPOCHLORITE. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38697-R. Frank's Pool Service, 2069 Cornell St., Sarasota FL 33577. POOL PUR. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38698-R. Smith Soft Water and Swimming Pools, PO Box 1327, Plant City FL 33566. SMITH'S WATER PURIFIER. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38699-R. Pat's Pool Service, 4523 S. Tamiami Trail, Sarasota FL 33579. HYPOCHLORITE. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38701-R. C. F. Curtis Construction, Inc., 12801 S. Belcher Rd., Largo FL 33540. MASTER POOLS BY CURTIS LIQUID POOL SANITIZER. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38703-R. DuPont Street Swimming Pool Supplies, 523 DuPont St., PO Box 190, Punta Gorda FL 33950. SPARKLE BRITE. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38704-R. Ace Pump Co. of New Port Richey, 1001-U.S. 19 No., New Port Richey FL 33552. SODIUM HYPOCHLORITE. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 38707-R. American Pool Service, Inc., 300 Warfield Ave., Venice FL 33595. SODIUM HYPOCHLORITE. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 39364-R. D-A Lubricant Co., Inc., 1331 W. 29th St., Indianapolis IN 46208. D-A MARINE FUEL CONDITIONER. Active Ingredients: 2,2'-oxybis (4,4,6-trimethyl-1,3,2-dioxaborinane) 2,2'-(L-methyltrimethylenedioxy), bis-(4-methyl-1,3,2-dioxaborinane) 25.7%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

EPA File Symbol 39365-R. Everseal Manufacturing Co., Inc., 475 Broad Ave., Ridgefield NJ 07657. EVERSEAL. Active Ingredients: Copper 8-quinolinolate 1.12%. Method of Support: Application proceeds under 2(b) of interim policy. PM22

EPA File Symbol 39476-R. Astrol Pool Co., 1542 Lexington Ave., Mansfield OH 44907. ASTRO-KLEER. Active Ingredients: Sodium Hypochlorite 12.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 39477-R. Economy Pool Suppliers, 401 E. Venice Ave., Venice FL 33595. SWIMMING POOL SANITIZER. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 39478-R. Family Pool Service, 141 Harbor Blvd. NE, Port Charlotte FL 33950. POOL SANITIZER. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

CORRECTED ITEMS

EPA Reg. No. 677-227. Diamond Shamrock Corp., Agricultural Chemicals Div., 1100 Superior Ave., Cleveland OH 44114. DACTHAL G-5 HERBICIDE (5% DACTHAL GRANULES) Active Ingredients: Dimethyl tetrachloroterephthalate 5.0%. (Originally published with incomplete active ingredient) PM23 (41 FR 34681 8/16/76).

EPA Reg. No. 1706-125. Nalco Chemical Co., 2907 Butterfield Rd., Oak Brook IL 60521. NALKIL 2413 GRANULAR WEED KILLER. Active Ingredients: Diuron [3-(3,4-dichlorophenyl)-1,1-dimethylurea] 2.0%. (Originally published with incorrect active ingredients) PM25 (41 FR 34683 8/16/76).

EPA Reg. No. 13437-4. Du Cor Chemical Corp., PO Box 13298, Orlando FL 32809. DUCOR ROACH AND ANT INSECTICIDE. Active Ingredients: 0,0-diethyl 0-(2-isopropyl-4-methyl-6-pyrimidinyl) phosphorothioate 00.501%. (Originally published without thioate decimal (PM15 41 FR 44736 10/12/76).

[FR Doc.76-32806 Filed 11-8-76; 8:45 am]

[OPP-33000/475 (FRL 641-7)]

RECEIPT OF APPLICATION FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (39 FR 31862) its interim policy with respect to the administration of section 3(c) (1) (D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended ("Interim Policy Statement"). On January 22, 1976, EPA published in the FEDERAL REGISTER a document entitled "Registration of a Pesticide Prod-

uct—Consideration of Data by the Administrator in Support of an Application" [41 FR 3339]. This document described the changes in the Agency's procedures for implementing section 3(c) (1) (D) of FIFRA, as set out in the Interim Policy Statement, which were effectuated by the enactment of the recent amendments to FIFRA on November 28, 1975 (Pub. L. 94-140), and the new regulations governing the registration and re-registration of pesticides which became effective on August 4, 1975 (40 CFR Part 162).

Pursuant to the procedures set forth in these FEDERAL REGISTER documents, EPA hereby gives notice of the applications for pesticide registration listed below. In some cases these applications have recently been received; in other cases, applications have been amended by the submission of additional supporting data, the election of a new method of support, or the submission of new "offer to pay" statements.

In the case of all applications, the labeling furnished by the applicant for the product will be available for inspection at the Environmental Protection Agency, Room 209, East Tower, 401 M Street, SW., Washington, D.C. 20460. In the case of applications subject to the new section 3 regulations, and applications not subject to the new section 3 regulations which utilize either the 2(a) or 2(b) method of support specified in the Interim Policy Statement, all data citations submitted or referenced by the applicant in support of the application will be made available for inspection at the above address. This information (proposed labeling and, where applicable, data citations) will also be supplied by mail, upon request. However, such a request should be made only when circumstances make it inconvenient for the inspection to be made at the Agency offices.

Any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after January 1, 1970, is being used to support an application described in this notice, (c) desires to assert a claim under section 3(c) (1) (D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data or the status of such data under section 10 must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Product Control Branch, Registration Division (WH-567), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Every such claimant must include, at a minimum, the information listed in the Interim Policy Statement of November 19, 1973.

Specific questions concerning applications made to the Agency should be addressed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs,

at the above address, or by telephone as follows:

PM 11, 12, & 13—202/755-9315
PM 21 & 22—202/426-2454
PM 24—202/755-2196
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PM 15, 16, & 17—202/426-9425
PM 23—202/755-1397
PM 25—202/426-2632
PM 32—202/426-9486
PM 34—202/426-9490

The Interim Policy Statement requires that claims for compensation be filed on or before January 10, 1977. With the exception of 2(c) applications not subject to the new section 3 regulations, and for which a sixty-day hold period for claims is provided, EPA will not delay any registration pending the assertion of claims for compensation or the determination of reasonable compensation. Inquiries and assertions that data relied upon are subject to protection under section 10 of FIFRA, as amended, should be made on or before December 9, 1976.

Dated: October 28, 1976.

JOHN B. RITCH, Jr.,

Director,

Registration Division.

APPLICATIONS RECEIVED (OPP-3300/475)

EPA Reg. No. 70-40. Rigo Co., Buckner KY 40010. KILL-KO 5% PREMIUM GRADE MALATHION DUST. Active Ingredients: Malathion (0,0-Dimethyl Dithiophosphate of Diethyl Mercaptosuccinate) 5%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 70-140. Rigo Co. KILL-KO ROSE DUST. Active Ingredients: Malathion 0,0-Dimethyl Dithiophosphate of Diethyl Mercaptosuccinate 5.0%; Folpet N-[(Trichloromethyl)Thio] Phthalimide 5.0%; 1,1-Bis (Chlorophenyl)-2,2,2-Trichloroethanol 1.5%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 148-710. Thompson-Hayward Chemical Co., 5200 Speaker Rd., Kansas City KS 66108. PHOSDRIN 2% DUST. Active Ingredients: Alpha Isomer of 2-carbomethoxy-1-methylvinyl dimethyl phosphate 1.2%; Related Compounds 0.8%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 228-133. Riverdale Chemical Co., 220 E. 17th St., Chicago Heights IL 60411. RIVERDALE KILLSALL LIQUID. Active Ingredients: Sodium Chlorate (NaClO₃) 18.5%; Sodium Metaborate (Na₂B₄O₇) 10.2%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA File Symbol 239-EULG. Chevron Chemical Co., Ortho Div., 940 Hensley St., Richmond CA 94804. ORTHO ORTHENE SYSTEMIC ROSE & FLOWER CARE 8-8-8. Active Ingredients: Acephate (0,0-Dimethyl acetylphosphoramidothioate) 1.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM16

EPA Reg. No. 259-45. Moka Chemical Co., 1708-16 Campbell, Kansas City MO 64108. N A C WEED KILLER. Active Ingredients: Sodium chlorate (NaClO₃) 18.5%; Sodium metaborate (Na₂B₄O₇) 10.1%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 279-739. FMC Corp., Agricultural Chemical Div., 100 Niagara St., Middleport NY 14105. MALATHION 25 SPRAY INSECTICIDE. Active Ingredients: Malathion 25.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 279-761. FMC Corp. MALATHION 25 WETTABLE INSECTICIDE. Active Ingredients: Malathion 25.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 279-833. FMC Corp. DICHLONE 3 DUST FUNGICIDE. Active Ingredients: Dichlone 3.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM21

EPA Reg. No. 279-1014. FMC Corp. DICHLONE 2 DUST. Active Ingredients: Dichlone 2.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM21

EPA Reg. No. 279-1632. FMC Corp. MALATHION 4 GRAIN PROTECTANT INSECTICIDE. Active Ingredients: Malathion 4.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 279-1993. FMC Corp. LIQUID MC DEFOLIANT DEFOLIANT. Active Ingredients: Sodium Chlorate 18.70%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 279-2951. FMC Corp. FERBAM 5 MALATHION 5 DUST FUNGICIDE-INSECTICIDE. Active Ingredients: Ferbam 5.00%; Malathion 5.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 279-2959. FMC Corp. SULFUR 50 FERBAM 5 MALATHION 5 DUST FUNGICIDE-INSECTICIDE. Active Ingredients: Ferbam 5.00%; Malathion 5.00%; Sulfur 50.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 279-3008. FMC Corp. SUPER LEAF DROPPER DEFOLIANT A LIQUID CHLORATE DEFOLIANT. Active Ingredients: Sodium Chlorate (NaClO₂) 28.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA File Symbol 464-LUE. The Dow Chemical Co., PO Box 1706, Midland MI 48640. DURSABAN 44 INSECTICIDE. Active Ingredients: Chlorpyrifos [O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate] 43.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM16

EPA Reg. No. 557-1763. Swift Agricultural Chemical Corp., 115 W. Jackson Blvd., Chicago IL 60604. VIGORO LAWN WEEDER & FEEDER. Active Ingredients: Atrazine (2-chloro-4-(ethylamino) - 6 - (isopropylamino) - s-triazine) 0.27%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 557-1863. Swift Agricultural Chemical Corp. SUPER WEEDER-FEEDER. Active Ingredients: Atrazine (2-chloro-4-(ethylamino) - 6 - (isopropylamino) - s-triazine) 0.47%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 707-92. Rohm and Haas, Independence Mall West, Philadelphia PA 19105. TOK WP-50. Active Ingredients: 2,4-dichlorophenyl p-nitrophenyl ether 50%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 746-21. MFA Oil, Columbia MO 64201. CHICKEN DUSTER. Active Ingredients: Malathion 4%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 746-85. MFA Oil. MFA STOCK AND POULTRY DUST. Active Ingredients: Malathion 4%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 829-229. Southern Agricultural Insecticides, Inc., PO Box 218, Palmetto FL 33561. SA BRAND 50 5% DIPHENAMID GRANULES. Active Ingredients: diphenamid (N,N-dimethyl-2,2-diphenylacetamide) 5%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 829-232. Southern Agricultural Insecticides, Inc. SA BRAND 50 & LAWN ORNAMENTAL VEGETABLE FUNGICIDE. Active Ingredients: Chlorothalonil (tetrachloroisophthalonitrile) 75%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM21

[FR Doc.76-32807 Filed 11-8-76; 8:45 am]

[FRL 641-8; OPP 00036]

STATE-FEDERAL FIFRA IMPLEMENTATION ADVISORY COMMITTEE: WORKING GROUP ON ENFORCEMENT

Meeting

Pursuant to P.L. 92-463, notice is hereby given that a two-day meeting of the State-Federal FIFRA Implementation Advisory Committee's Working Group on Enforcement will be held on December 1 and 2 in the VIP room at the Atlanta Cabana, Peachtree and 7th Sts., Atlanta, Georgia.

This is the fourth meeting of the Working Group on Enforcement under SFFIAC auspices. The meeting will be concerned with the following issues: Use investigations; State enforcement matrix; enforcement policy vis-a-vis custom blenders; assessment of civil penalties against pesticide applicators; aerial application of registered pesticides; review of previous Working Group recommendations; and other enforcement matters which may arise.

This meeting, which will start at 8:30 a.m., December 1, is open to the public. For copies of relevant materials to be made available in advance of the meeting, please contact P. H. Gray, Jr., Executive Secretary, State-Federal FIFRA Implementation Advisory Committee, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-7014.

Dated: November 4, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc.76-32971 Filed 11-8-76; 8:45 am]

[FRL 641-2 (OPP-42024A)]

TEXAS

Approval of State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act

(FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 et. seq.) and the implementing regulations of 40 CFR Part 171 require each State desiring to certify applicators to submit a plan for its certification programs. Any state certification program under this section shall be maintained in accordance with the State Plan approved under this section.

On July 26, 1976, notice was published in the FEDERAL REGISTER (41 FR 30714) of the intent of the Regional Administrator, Environmental Protection Agency (EPA) Region VI, to approve, on a contingency basis, the Texas State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides (Texas State Plan). Contingency approval was requested by the State of Texas pending enactment of proposed amendments to existing legislation and subsequent regulations. Complete copies of the Texas State Plan (except for sample examinations) were made available for public inspection at the Texas Department of Agriculture, Austin, Texas; Pesticides Branch, Air and Hazardous Materials Division, EPA Region VI, Dallas, Texas; and the Federal Register Section, Technical Services Division, Office of Pesticide Programs, EPA Headquarters, Washington, D.C.

One comment was received concerning the State Plan during the 30 day comment period. The comment was directed to the following statement in the Texas State Plan Summary: "In emergency situations, a previously uncertified private applicator may obtain single product, single purchase/single use certification through an interview with Texas Department of Agriculture or Extension Service personnel, or an approved dealer. A record of the interview will be made by the administering official and forwarded to the Department." The commenter requested clarification of the term "approved dealer". An approved dealer, as noted in the Texas State Plan, will be a licensed dealer who also is certified as a commercial applicator in the Agricultural Category with authority from the Texas Department of Agriculture (TDA) to confer, only during emergency conditions, Single Product/Single Use certification to those individuals having a need to use a Restricted Use Pesticide because of an unforeseen emergency.

It has been determined that the Texas State Plan will satisfy the requirements of section 4(a)(2) of the amended FIFRA and 40 CFR Part 171 if enactment of the proposed amendments to existing legislation and subsequent regulations are completed by the State of Texas in accordance with and as prescribed in the Texas State Plan. Accordingly, the Texas State Plan is approved contingent upon enactment of the proposed amendments to existing legislation as prescribed in the Texas State Plan.

This contingency approval shall expire one (1) year from its effective date if these terms and conditions are not satisfied by that time. On or before the expiration of the period of contingency approval, a notice shall be published in the FEDERAL REGISTER concerning the extent to which these terms and conditions have

been satisfied, and the approval status of the Texas State Plan as a result thereof.

Effective date: Pursuant to section 4 (d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the Agency finds that there is good cause for providing that the one year contingency approval granted herein to the Texas State Plan shall be effective immediately. Neither the Texas State Plan itself nor this Agency's contingent approval of the Plan create any direct or immediate obligations on pesticide applicators or other persons in the State of Texas.

Delays in starting the work necessary to implement the Plan, such as may be occasioned by providing some later effective date for this contingency approval, are inconsistent with the public interest. Accordingly, this contingent approval shall become effective immediately.

Dated: October 13, 1976.

J. PAUL COMOLA,
Acting Regional Administrator,
EPA, Region VI.

[FR Doc. 76-32804 Filed 11-8-76; 8:45 am]

FEDERAL ENERGY ADMINISTRATION

OFFICE OF EXCEPTIONS AND APPEALS

Cases Filed Week of October 8 through October 15, 1976

Notice is hereby given that during the week of October 8 through October 15, 1976 the appeals and applications for exception or other relief listed in the Appendix below to this notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the FEA action sought in such cases may file with the FEA written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

MICHAEL F. BUTLER,
General Counsel.

NOVEMBER 2, 1976.

APPENDIX.—List of cases received by the Office of Exceptions and Appeals, Week of Oct. 8 through Oct. 15, 1975

Date	Name and location of applicant	Case No.	Type of submission
Oct. 8, 1976	Board of County Commissioners, Utah County, Provo, Utah. (If granted: The FEA's Aug. 27, 1976, decision and order would be rescinded and Arizona Fuels Corp. would not be permitted to purchase crude oil which is produced from the Upper Valley Escalante Field in Garfield County, Utah.)	FEA-0985	Appeal of FEA decision and order in Arizona Fuels Corp., 4 FEA par. 83,061 (Aug. 27, 1976).
Do.....	Boise Aviation Fuel Co., Boise, Utah. (If granted: Boise Aviation Fuel Co. would receive an exception to 10 CFR 212.93 which would allow it to pass through nonproduct cost increases in excess of \$0.04 per gallon.)	FEE-3211	Price exception (sec. 212.93).
Do.....	Boston Gas Co., Boston, Mass. (If granted: The effective date of the FEA's May 27, 1976, decision and order would be changed to Apr. 15, 1977.)	FEE-3213	Extension of exception relief in Boston Gas Co., 3 FEA par. 87,026 (May 27, 1976).
Do.....	Braden-Zenith, Inc., Wichita, Kans. (If granted: The FEA's Sept. 21, 1976, remedial order would be rescinded and Braden-Zenith, Inc., would not be required to refund the NCEA overcharges in the total amount of \$401,731.)	FEA-0980	Appeal of FEA's remedial order dated Sept. 21, 1976. Stay request.
Do.....	Cache County Corp., Logan, Utah. (If granted: The FEA's Aug. 27, 1976, decision and order would be rescinded and Arizona Fuels Corp. would not be permitted to purchase crude oil which is produced from the Upper Valley Escalante Field in Garfield County, Utah.)	FEA-0983	Appeal of FEA decision and order in Arizona Fuels Corp., 4 FEA par. 83,061 (Aug. 27, 1976).
Do.....	City of Los Angeles, Los Angeles, Calif. (If granted: The city of Los Angeles, a royalty interest owner in the Venice Beach lease would receive the benefit of the exception relief granted in the Aug. 27 decision and order to the working interest owners.)	FEA-0981	Appeal of FEA's decision and order in Danson Oil Corp., 4 FEA par. 83,064 (Aug. 27, 1976).
Do.....	Gunnison City, Utah, Gunnison, Utah. (If granted: The FEA's Aug. 27, 1976, decision and order would be rescinded and Arizona Fuels Corp. would not be permitted to purchase crude oil which is produced from the Upper Valley Escalante Field in Garfield County, Utah.)	FEA-0984	Appeal of FEA decisions order in Arizona Fuel Corp., 4 FEA par. 83,061 (Aug. 27, 1976).
Do.....	Little America Refining Co., Evansville, Wyo. (If granted: Little America Refining Co. would receive a temporary stay of its entitlement purchase obligations pending a final determination of its appeal from the exception decision and order issued by the FEA on Sept. 10, 1976.)	FST-0016	Request for temporary stay.
Do.....	Little America Refining Co., Evansville, Wyo. (If granted: Little America Refining Co. would receive a stay of its entitlement purchase obligations pending a final determination of its appeal from the exception decision and order issued by the FEA on Sept. 10, 1976.)	FES-0973	Request for stay.
Oct. 12, 1976	Aurora Town Board, Aurora, Utah. (If granted: The FEA's Aug. 27, 1976, decision and order would be rescinded and Arizona Fuels Corp. would not be permitted to purchase oil which is produced from the Upper Valley Escalante Field in Garfield County, Utah.)	FEA-0989	Appeal of FEA decision and order in Arizona Fuels Corp., 4 FEA par. 83,061 (Aug. 27, 1976).
Do.....	Cities Service Co., Washington, D.C. (If granted: Cities Service Co. would receive a temporary stay of the requirements of a remedial order issued to the firm on Sept. 10, 1976, pending a final determination of its application for stay.)	FST-0017	Request for temporary stay.
Do.....	Cities Service Co., Washington, D.C. (If granted: The FEA's Sept. 10, 1976, remedial order would be rescinded and Cities Service Co. would not be required to make refunds of overcharges in its sales of No. 2 oils.)	FEA-0988	Appeal of FEA remedial order issued Sept. 10, 1976.

Date	Name and location of applicant	Case No.	Type of submission
Do.....	City of Salina (Utah), Salina, Utah. (If granted: The FEA's Aug. 27, 1976, decision and order would be rescinded and Arizona Fuels Corp. would not be permitted to purchase oil which is produced from the Upper Valley Escalante Field in Garfield County, Utah.)	FEA-0990	Appeal of FEA decision and order in Arizona Fuels Corp., 4 FEA par. 83,061 (Aug. 27, 1976).
Do.....	Clark Oil & Refining Corp., Milwaukee, Wis. (If granted: Clark Oil & Refining Corp. would receive an exception to sec. 211.67(m)(1)(ii)(A).)	FEE-3214	Allocation exception (sec. 211.67(m)(1)(ii)(A)).
Do.....	Energy Corp. of Louisiana Ltd., New Orleans, La. (If granted: The FEA's Sept. 10, 1976, decision and order would be revoked.)	FEX-0093	Supplemental order to FEA decision and order in Energy Corp. of Louisiana Ltd., 4 FEA par. (Sept. 10, 1976).
Do.....	Fortune Drilling Corp., Midland, Tex. (If granted: FEA's Sept. 10, 1976, decision and order would be rescinded and Fortune Drilling Corp. would be permitted to retain revenues which it realized as a result of charging prices for crude oil which it produced from two wells operating on the Ruth Gordon lease which exceeded maximum allowable price levels.)	FEA-0994	Appeal of FEA's exception decision and order in Fortune Drilling Corp., 4 FEA par. (Sept. 10, 1976).
Do.....	Frank Katz, Rio Hondo, Tex. (If granted: The FEA's Oct. 4, 1976, remedial order would be rescinded and Frank Katz would not be required to make refunds for overcharges made in sales of propane and fuel oil.)	FEA-0987	Appeal of remedial order issued Oct. 4, 1976.
Do.....	Phillips Petroleum Co., Bartlesville, Okla. (If granted: The FEA's Aug. 27, 1976, decision and order would be rescinded and Arizona Fuels Corp. would not be permitted to purchase oil which is produced from the Upper Valley Escalante Field in Garfield County, Utah.)	FEA-0996	Appeal of FEA decision and order in Arizona Fuels Corp., 4 FEA par. 83,061 (Aug. 27, 1976).
Do.....	Salt Lake County (Utah) Commission, Salt Lake City, Utah. (If granted: The FEA's Aug. 27, 1976, decision and order would be rescinded and Arizona Fuels Corp. would not be permitted to purchase oil which is produced from the Upper Valley Escalante Field in Garfield County, Utah.)	FEA-0991	Appeal of FEA decision and order in Arizona Fuels Corp., 4 FEA par. 83,061 (Aug. 27, 1976).
Do.....	Six County Economic Development District, Nephi, Utah. (If granted: The FEA's Aug. 27, 1976, decision and order would be rescinded and Arizona Fuels Corp. would not be permitted to purchase oil which is produced from the Upper Valley Escalante Field in Garfield County, Utah.)	FEA-0992	Appeal of FEA decision and order in Arizona Fuels Corp., 4 FEA par. 83,061 (Aug. 27, 1976).
Do.....	Standard Oil Co., Cleveland, Ohio. (If granted: Standard Oil Co. would receive, retroactive to Nov. 1, 1975, an exception from the equal application rule with respect to its retail sales of gasoline and diesel fuels on the Ohio Turnpike.)	FEE-3215	Price exception (sec. 212.83).
Do.....	State of Alaska, Juneau, Alaska. (If granted: The FEA's Aug. 6, 1976, decision and order would be reversed and Union Oil Co. of California would be permitted to determine the price of the crude oil produced from the Trading Bay unit in the MacArthur River Field, Cook Inlet, Alaska, without regard to the current cumulative deficiency which has accrued since Apr. 8, 1976.)	FEA-0988	Appeal of FEA decision and order in Union Oil Co. of California, 4 FEA par. 83,039 (Aug. 6, 1976).
Do.....	Texaco, Inc., New York, N.Y. (If granted: FEA's Aug. 31, 1976, decision and order would be rescinded and Texaco, Inc., would not be required to supply Jones & Murtha Distributing Co., Inc., with motor gasoline.)	FEA-0995	Appeal of FEA's exception decision and order in Jones & Murtha Distributing Co., 4 FEA par. 83,076 (Aug. 31, 1976).
Do.....	Weber County (Utah) Commission, Ogden, Utah. (If granted: The FEA's Aug. 27, 1976, decision and order would be rescinded and Arizona Fuels Corp. would not be permitted to purchase oil which is produced from the Upper Valley Escalante Field in Garfield County, Utah.)	FEA-0993	Appeal of FEA's decision and order in Arizona Fuels Corp., 4 FEA par. 83,901 (Aug. 27, 1976).
Oct. 13, 1976.	Frank Dupuis Co., Pawtucket, R.I. (If granted: FEA region I's Sept. 30, 1976, remedial order would be rescinded and Frank Dupuis Co. would not be required to make refunds of overcharges in its sales of heating oil.)	FEA-0997	Appeal of FEA region I's remedial order.
Do.....	Joe E. Sharber, Wewoka, Okla. (If granted: The Rodden No. 1 Well located in Seminole County, Okla., would be classified as a stripper well.)	FEE-3198	Exception from 10 CFR 210.32.
Do.....	Standard Oil Co. (Indiana), Chicago, Ill. (If granted: Standard Oil Co. (Indiana) would be permitted to increase its prices to reflect nonproduct cost increases in excess of \$0.005 per gallon for natural gas liquid products produced at its Levelland and Slaughter gas plants.)	FEE-3216 FEE-3217	Price exception (sec. 212.165).
Oct. 14, 1976	McCoy Oil Co., Region 10. (If granted: The modified remedial order issued by FEA region X on Sept. 3, 1976, would be revoked.)	FEA-1000 FES-1000	Appeal of region X's modified remedial order.
Do.....	Sun Co., Inc., Washington, D.C. (If granted: Sun Co., Inc., would receive copies of certain documents relating to the FEA's crude oil transfer pricing policy and FEA data relating to specified reference types of crude oil.)	FEA-0998	Appeal of FEA's information request denial.
Do.....	Tenneco Oil Co., Atlanta, Ga. (If granted: The FEA's Sept. 7, 1976, allocation order would be rescinded and Tenneco Oil Co. would receive an increase in its base period use of motor gasoline at the Tenneco retail gasoline sales outlet located at 4715 San Jacinto St., Houston, Tex.)	FEA-0999	Appeal of FEA allocation order dated Sept. 7, 1976.

[FR Doc.76-32765 Filed 11-3-76;2:35 pm]

OFFICE OF EXCEPTIONS AND APPEALS
Cases Filed Week of October 15 through
October 22, 1976

Notice is hereby given that during the week of October 15 through October 22, 1976, the appeals and applications for exception or other relief listed in the Appendix below to this notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the FEA action

sought in such cases may file with the FEA written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

MICHAEL F. BUTLER,
 General Counsel.

NOVEMBER 2, 1976.

APPENDIX.—List of cases received by the Office of Exceptions and Appeals, week of
Oct. 15 through Oct. 22, 1976

Date	Name and location of applicant	Case No.	Type of submission
Oct. 15, 1976	Cities Service Co., Washington, D.C. (If granted: The FEA's Oct. 12, 1976, decision and order would be modified and Cities Service Co. would not be required to establish an escrow account.)	FMR-0066	Modification of FEA's decision and order in Cities Service Co., 4 FEA par. (Oct. 12, 1976).
Do.....	Southland Oil Co., Savannah, Ga. (If granted: Southland Oil Co. would receive a stay of the requirements of the Sept. 8, 1976, assignment orders issued by region IV pending a final determination of its application for exception.)	FES-3202	Stay request.
Oct. 18, 1976	City of Long Beach, California, Long Beach, Calif. (If granted: Crude oil produced from the fault block II unit, Wilmington Oil Field, Los Angeles County, Calif., would be sold at upper tier ceiling prices.)	FEE-3157	Price exception (sec. 212-72).
Do.....	Emond Oil Co., Pawtucket, R.I. (If granted: The FEA's Sept. 27, 1976, remedial order would be rescinded and Emond Oil Co. would not be required to make refunds for overcharges on sales of No. 2 heating oil.)	FEA-1002 FES-1002	Appeal of FEA region I's remedial order dated Sept. 27, 1976. Stay request.
Do.....	Farmland Industries, Inc., Kansas City, Mo. (If granted: Farmland Industries, Inc., would receive an extension of the price relief granted on July 31, 1976, to permit it to increase its prices to reflect nonproduct cost increases in excess of \$0.00 5 per gallon for natural gas liquid products produced at the following natural gas plants: Gillette, Lamont, Mertz, and Quilman.)	FEE-3219— FEE-3222	Extension of the price relief in Farmland Industries, Inc., 4 FEA par. 83,074 (July 31, 1976).
Do.....	Ford Oil Co., Santa Rosa, Tex. (If granted: Ford Oil Co. would receive retroactive exception relief from the provisions of 10 CFR 212.93(a).)	FEE-3223	Price exception (Sec. 212.93).
Do.....	Ohio Oil & Gas Association; The Independent Oil & Gas Association of West Virginia, Newark, Ohio. (If granted: The FEA's Sept. 10, 1976, decision and order would be rescinded and each producer of new Penn Grade crude oil in Ohio, Pennsylvania, and West Virginia would be permitted to sell at a price in excess of the appropriate upper tier ceiling price computed pursuant to the provisions of sec. 212.74.)	FEA-1001	Appeal of FEA decision and order in Pennsylvania Oil & Gas Association; Ohio Oil & Gas Association; Independent Oil & Gas Association of West Virginia, 4 FEA par. 83,085 (Sept. 10, 1976).
Do.....	Varibus Corp., Beaumont, Tex. (If granted: The FEA's Sept. 20, 1976, remedial order would be rescinded and Varibus Corp. would not be required to make refunds to Thomas P. Reidy and Riffe Petroleum for overcharges in sales of No. 2 heating oil.)	FEA-1003	Appeal of FEA region VI's remedial order dated Sept. 20, 1976.
Do.....	Wallace & Wallace Fuel Oil Co., St. Albans, N.Y. (If granted: FEA region II's Mar. 11, 1976, decision and order would be rescinded and Wallace & Wallace Fuel Oil Co. would receive an increase in its base period use of No. 2 fuel oil.)	FEA-1006	Appeal of FEA region II's decision and order.
Oct. 19, 1976	Cities Service Co., Tulsa, Okla. (If granted: Cities Service Co. would receive an exception to the equal application rule set forth in sec. 212.83(h) which would enable it to implement its new dealer delivered pricing program.)	FEE-3226	Price exception (sec. 212.83(h)).
Do.....	City of Long Beach, Long Beach, Calif. (If granted: Crude oil produced from the well-22B, fault block III, Wilmington Oil Field, Los Angeles County, Calif., would be sold at upper tier ceiling prices.)	FEE-3227	Price exception (sec. 212.74).
Do.....	R. H. Engelke, San Antonio, Tex. (If granted: Crude oil produced from the Bertha Copsey lease located in Jackson County, Tex., would be sold at upper tier ceiling prices.)	FEE-3228	Price exception (sec. 212.73).
Do.....	Luke Bros., Inc., Oklahoma City, Okla. (If granted: FEA's Oct. 5, 1976, remedial order would be rescinded and Luke Bros., Inc., would not be required to make refunds for overcharges on sales of propane.)	FEA-1004 FES-1004	Appeal of FEA region VI Oct. 5, 1976, remedial order. Stay request.
Do.....	Peters Fuel Corp., Oakland, Md. (If granted: FEA's Oct. 6, 1976, remedial order would be rescinded and Peters Fuel Corp. would not be required to make refunds for overcharges on sales of petroleum products.)	FEA-1005	Appeal of FEA's Oct. 6, 1976, remedial order.
Do.....	Varibus Corp., Beaumont, Tex. (If granted: Varibus Corp. would receive a stay of the requirements of a remedial order dated Sept. 20, 1976, which was issued to the firm pending a final determination of its appeal.)	FES-1003	Stay request.

Date	Name and location of applicant	Case No.	Type of submission
Do.....	Ventech Engineers; Twin-Tech Oil Co., Houston, Tex. (If granted: Ventech Engineers; Twin-Tech Oil Co. would receive an exception to the mandatory petroleum price regulations which would permit it to pass through increased natural gas "shrinkage" and plant fuel costs.)	FEE-3225	Price exception.
Do.....	Warrior Asphalt Co., Washington, D.C. (If granted: Warrior Asphalt Co. would receive an extension of the entitlement relief granted in FEA's June 17, 1976, decision and order.)	FEE-3224	Extension of FEA's exception relief granted in Warrior Asphalt Co., 3 FEA par. 83,237 (June 17, 1976).
Oct. 20, 1976..	Doric Petroleum, Inc. (Hennessey), Houston, Tex. (If granted: Doric Petroleum, Inc., would be permitted to increase its prices to reflect nonproduct cost increases in excess of \$0.005 per gallon for natural gas liquid products produced at its Hennessey gas processing plant.)	FEE-3230	Price exception (sec. 212-165).
Do.....	Golden Flame Fuel Co., Pittsburgh, Pa. (If granted: The FEA's July 23, 1976, decision and order would be rescinded and Golden Flame Fuel Co. would be permitted to increase its maximum permissible selling prices for No. 2 heating oil and to retain revenues which it realized from charging prices which exceeded the firm's maximum permissible selling prices computed pursuant to sec. 212.93.)	FMR-0067	Rescission of FEA's decision and order in Golden Flame Fuel Co., 4 FEA par. 80,511 (July 23, 1976).
Do.....	Eddy Refining Co., Houston, Tex. (If granted: Eddy Refining Co. would receive retroactive and prospective price relief by being permitted to (i) increase its May 15, 1973, selling prices of gasoline, kerosene, solvents, and residual fuel oil, (ii) decrease its May 1973 product costs, (iii) passthrough nonproduct costs incurred during the period August 1973 through December 1974 even though the firm failed to prorate those cost increases, and (iv) passthrough nonproduct costs incurred subsequent to January 1975 which did not qualify as allowable nonproduct costs.)	FEE-3232	Price exception (secs. 212.82, 212.83 and 212.87).
Do.....	Husky Oil Co. of Delaware, Washington, D.C. (If granted: Husky Oil Co. of Delaware would receive an extension of the entitlement relief granted in FEA's June 21, 1976, decision and order.)	FEE-3231	Extension of FEA's exception relief granted in Husky Oil Co. of Delaware, 3 FEA par. 83,225 (June 21, 1976).
Do.....	Lunday-Thagard Oil Co., South Gate, Calif. (If granted: Lunday-Thagard Oil Co. would receive an extension of the entitlement relief granted in FEA's June 18, 1976, decision and order.)	FEE-3229	Extension of FEA's exception relief granted in Lunday-Thagard Oil Co., 3 FEA par. 83,228 (June 18, 1976).
Do.....	Rock Island Refining Corp., Washington, D.C. (If granted: Rock Island Refining Corp. would receive an extension of the entitlement relief granted in FEA's Sept. 10, 1976, decision and order.)	FEE-3209	Extension of FEA's exception relief granted in Rock Island Refining Corp., 4 FEA par. 83,086 (Sept. 10, 1976).
Do.....	Whaleco Fuel Corp., Brooklyn, N.Y. (If granted: FEA's Sept. 20, 1976, decision and order would be rescinded and Whaleco Fuel Corp. would be issued entitlements for 181,008 barrels of residual fuel oil which it purchased from Asiatic Petroleum Co. during the months of February and March 1976.)	FEA-1008	Appeal of FEA's exception decision and order in Whaleco Fuel Corp., 4 FEA par. (Sept. 20, 1976).
Oct. 21, 1976	Eason Oil Co. (Crescent), Oklahoma City, Okla. (If granted: Eason Oil Co. would be permitted to increase its prices for natural gas liquid products produced at the Crescent plant to reflect nonproduct cost increases in excess of \$0.005 per gallon.)	FEE-3235	Price exception (sec. 212-165).
Do.....	K.L.M. Oil Co., Long Beach, Calif. (If granted: K.L.M. Oil Co.'s Marquis No. 1 well would be classified as a stripper well lease on a retroactive basis.)	FEE-3236	Price exception (sec. 212-74).
Do.....	North American Petroleum Corp., Abilene, Tex. (If granted: North American Petroleum Corp. would receive an exception to enable it to sell the entitlements issued to the firm during the month of July 1976.)	FEE-3237	Allocation exception (sec. 211.67).
Do.....	Pontiac Stadium Authority, Pontiac, Mich. (If granted: The Pontiac Stadium Authority would receive an increase in its base period use of propane.)	FEE-3233	Allocation exception.
Do.....	Sunland Refining Corp., Bakersfield, Calif. (If granted: Sunland Refining Corp. would receive an extension of the entitlement relief granted in FEA's June 14, 1976, decision and order.)	FEE-3234	Extension of FEA's exception relief in Sunland Refining Corp., 3 FEA par. 83,236 (June 14, 1976).

[FR Doc.76-32766 Filed 11-3-76;2:35 pm]

FEDERAL MARITIME COMMISSION

[Docket No. 78-60]

INTERMODAL DUAL RATE AGREEMENTS

Petition for Declaratory Order

Notice is hereby given that a petition for declaratory order has been filed by Seatrain International, S. A., a common carrier by water in the foreign commerce of the United States. Seatrain provides services by direct water and/or mini-bridge between United States ports and Europe and between United States ports and the Far East.

Seatrain petitions the Commission pursuant to Rule 5(h) of the Rules of Practice to remove uncertainty as to the

jurisdictional parameters of section 14b of the Shipping Act, 1916. Specifically Seatrain requests a declaratory order on the issue of whether section 14b of the Shipping Act, 1916 authorizes the filing of dual rate agreements pursuant to which dual rates will be applied to joint-through, intermodal rates published jointly by railroads and water carriers.

By means of this notice interested persons, including the Commission's Bureau of Hearing Counsel, are invited to comment on the petition. Any such comments, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573 on or before November 22, 1976. Any person desiring a hearing on the petition shall provide a clear and

concise statement of the matters upon which they desire to adduce evidence. A copy of any such comments shall be forwarded to counsel for petitioner, Charles L. Haslup III, Coles & Goertner, 1000 Connecticut Ave., NW., Washington, D.C. 20036.

Interested parties may inspect and obtain a copy of the petition at the Washington office of the Federal Maritime Commission, 1100 L St., NW., Room 11409; or may inspect the petition at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-32937 Filed 11-8-76;8:45 am]

[Docket No. 74-12; Agreement No. 9939-1]

MODIFICATION AND EXTENSION OF A POOLING, SAILING AND EQUAL ACCESS TO GOVERNMENT-CONTROLLED CARGO AGREEMENT

Order of Investigation and Hearing

This proceeding was instituted to determine the approvability of Agreement No. 9939-1. Agreement No. 9939-1 modifies Agreement No. 9939¹ by amending the pooling provisions to include certain cargo, reducing the minimum sailing requirements, and changing the pool formula.

Agreement No. 9939 is a pooling, sailing and equal access to government-controlled cargo arrangement between Prudential Linés (PL) and Compania Peruana de Vapores (CPV) covering all cargoes, with certain exceptions, moving under local bills of lading from U.S. West Coast ports to ports in Peru. Agreement No. 9939 was originally approved until March 22, 1974.

PL and CPV have now submitted Agreement Nos. 9939-2, and 9939-3 for approval of the Commission. Furthermore, they have requested the Commission to substitute Agreement No. 9939-2 for Agreement No. 9939-1 as the subject of this proceeding and grant approval during the pendency of this proceeding to Agreement Nos. 9939-2 and 9939-3 instead of Agreement No. 9939.

Agreement No. 9939-2 is a completely new agreement between Prudential Lines, Inc. (PL) and Compania Peruana de Vapores (CPV) providing only for equal access to government-controlled cargoes. It is intended to supersede Agreement Nos. 9939 and 9939-1.

Agreement No. 9939-3 is an agreement to suspend the overcarriage penalty provisions under Article 7 of Agreement No. 9939 for the period ending March 31, 1975, and for any period thereafter up to the effective date of Agreement No. 9939-2, and as such, is an interim arrangement intended to be operative as

¹ Agreement No. 9939-1 was filed as a replacement for Agreement No. 9939, but was protested and set down for investigation and hearing in this proceeding. In the interim Agreement No. 9939 was given approval pendente lite.

long as the original Agreement No. 9939 remains in effect or until it is superseded by Agreement No. 9939-2.

Westfal-Larsen (WL) who had protested Agreement No. 9939-1 has also protested Agreement Nos. 9939-2 and 9939-3 and requested that they be set down for investigation and hearing to determine their ultimate approvability. WL contends that these two agreements raise serious questions which should be answered satisfactorily before the Commission can approve them. For example, as regards Article 1 of Agreement No. 9939-2 which declares that PL and CPV will "collaborate mutually in the carriage of cargoes", WL argues:

This language is very broad; it is certainly adequate to encompass the sailing coordination which Prudential's motion disclaims. . . . Because of the broad anticompetitive possibilities here, PL and CPV should set forth expressly within the agreement, the activities for which they seek Commission approval.

WL also notes that Agreement No. 9939 has no such mutual collaboration provision.

WL also specifically objects to the provisions in Article 1 of Agreement No. 9939-2 to the extent it provides for the mutual collaboration of the parties in both the southbound and northbound trades. WL believes that since Agreement No. 9939 operates only in the southbound direction, Agreement No. 9939-2 would double the scope of the arrangement between WL and CPV.

The provisions of Article 3 of Agreement No. 9939-2 also concern WL. By that paragraph PL and CPV:

Agree to maintain a close exchange of information and viewpoints in their combined efforts to transport cargo such that if one line must refuse an offering, the offering will be passed on to the other line.

WL views this provision as requiring not only the referral of a cargo offering but the referral of the cargo itself as well, thereby limiting the shipper's choice of carriers. WL points out that this provision also was not contained in Agreement No. 9939.

Even though Westfal-Larsen raises these objections regarding the approvability of Agreement Nos. 9939-2 and 9939-3, it does not object to the approval of Agreement Nos. 9939-2 and 9939-3 pendentite lite if Agreement No. 9939-2 is limited to cover only the southbound trade from the Pacific Coast of the United States to Peru.

PL in its reply to WL's protest and comments, states that it was not intended that paragraph 1 of Agreement No. 9939-2 extend beyond the southbound trade from the Pacific Coast of the United States to Peru. Therefore, PL has no objection to the conditions expressed by WL to limit Agreement No. 9939-2 to so limit the scope of the agreement.

PL has also explained, in a reply to an inquiry from the Commission staff seeking clarification of language in Agreement No. 9939-2:

(1) That part of Article 1 of the Agreement in which the parties . . . "declare their intention to collaborate mutually in the carriage of cargoes which move in this trade . . ." is intended to be a statement of their commitment to engage in the activities permitted elsewhere in the Agreement. The phrase does not contemplate additional collaboration beyond that specifically set forth in the remaining Articles of the Agreement.

(2) Article 3 concerns the exchange of information and the passing of cargo offerings by the parties. Under this provision the parties intend that if one of the companies cannot accommodate a shipper's request for space, that company will advise the shipper that service may be available on vessels of the other party and will further advise the shipper to contact the other party. The "exchange of information and viewpoints" referred to in Article 3 refers to information which may be necessary to facilitate the foregoing procedure, including the exchange of information such as the schedules of vessels and the types of cargo they may accommodate.

Agreement No. 9939-2, which is essentially an equal access agreement, is anticompetitive in that it implements the cargo preference laws of Peru and exacerbates their anticompetitive effects. Normally this type of agreement would not be given interim approval since no emergency conditions exist. An interim approval of an agreement which would be in violation of the antitrust laws, such as asked for in this proceeding, is an extraordinary action of the Commission which must be justified by an emergency or other overriding public interest consideration. Order Denying Petition for Reconsideration, Canadian-American Working Arrangement, Docket No. 75-56 (February 26, 1976).

There are, however, other circumstances in this case which must be taken into consideration. Agreement No. 9939 is currently in force and has Commission approval pendentite lite. Agreement No. 9939 is an equal access, pooling and sailing arrangement, and as such has a far greater anticompetitive impact than does Agreement No. 9939-2—a simple equal access agreement. Therefore, it is in the public interest that a less anticompetitive agreement be substituted for the greater anticompetitive agreement even if the approval is pendentite lite.

However, to the extent that Agreement No. 9939-2 extends the scope of the anticompetitive activity carried out under Agreement No. 9939, or contains new anticompetitive activities not envisioned by Agreement No. 9939, the public interest considerations for approval pendentite lite of Agreement No. 9939-2 are diminished. The questions raised by WL are therefore very pertinent.

A plain reading of Article 1 of Agreement No. 9939-2 indicates that sailing coordination may be encompassed by its terms and could be carried out if the parties so wished. The elimination of the coordination provision contained in Agreement No. 9939, would be a public interest consideration favorable to the approval of Agreement No. 9939-2

pendente lite. However the parties have indicated that Article 1 is not intended to encompass "collaboration beyond that specifically set forth in the remaining Articles of the Agreement." Therefore, Article 1 is not an accurate statement of the true intent of the parties. Because Article 1 does not clearly reflect the agreement between the parties, as indicated by them here, Article 1 should be modified to conform to the true intent of the parties.

Moreover, since the parties to this Agreement have indicated that it was not their intention that Agreement No. 9939-2 extend beyond the southbound trade from the Pacific Coast of the United States to Peru, and do not object to a modification limiting the Agreement to the southbound trade, that Agreement should be accordingly modified.

There is also a discrepancy between what the plain words of Article 3 convey and the explanation given by PL as to the intent of the parties with regard to that Article. Whereas Article 3 specifies that an "offering" tendered by the shipper will be passed on by the other party, the intent of the parties appears to be that the shipper will be advised to contact the other party himself. There is, of course, a fundamental distinction between the two approaches in the amount of leeway a shipper would have in choosing a carrier. Furthermore, the legality of an agreement which would attempt to bind a shipper to ship on a carrier different from the carrier to which he tended his offer, is questionable. Since the parties have, however, indicated that they intended to enact a different scheme than that which is reflected in Article 3, we need not consider the merits of that which is reflected. Suffice it to state that Article 3 should therefore be modified to conform to the intent of the parties.

We will not at this time deal with the question of whether such a shipper referral scheme is an unreasonable restraint of trade so as to be violative of the antitrust laws of the United States or is otherwise contrary to section 15 of the Shipping Act, 1916. We feel that those questions may be better dealt with in the evidentiary aspects of this proceeding. A full consideration of this provision in light of its anticompetitive effects will better enable the Commission to make a determination as to its reasonableness or unreasonableness.

Finally, we come to the question of the approvability of Agreement No. 9939-3, pendentite lite. First of all it must be noted that there is no allegation, nor is there any indication, that Agreement No. 9939-3 results in unreasonable restraint of trade or is otherwise in violation of section 15. Actually, Agreement No. 9939-3 might well have the contrary effect of increasing competition since it eliminates the penalty provisions contained in the pooling provisions of Agreement No. 9939. WL contends only that Agreement No. 9939-3 is in consideration of Agreement No. 9939-2 and should

therefore be treated as an integral part of Agreement No. 9939-2. But even if Agreement No. 9939-3 is considered to be an integral part of Agreement No. 9939-2, it is approvable since, as has been shown above, there are sufficiently important public interest considerations attendant to the approval of Agreement No. 9939-2 *pendente lite*.

Therefore it is ordered, That Agreements Nos. 9939-2 and 9939-3 are approved *pendente lite* on the conditions that:

(1) Article 1 of Agreement No. 9939-2 be modified to read as follows:

1. The "Peruvian Line" and "Prudential Lines" recognize the fact that they have established regular maritime transportation services between ports in Peru and ports on the West Coast of the U.S.A. and declare their intention to cooperate to the extent allowed by this agreement for the purpose of insuring that commerce moving in the South-bound trade from the Pacific Coast of the United States to Peru be served regularly and efficiently.

(2) Article 3 of Agreement No. 9939-2 be modified to read as follows:

3. The "Peruvian Line" and "Prudential Lines" agree that if one of the parties cannot accommodate a shipper's request for space, that party will advise the shipper that service may be available on vessels of the other party and will further advise the shipper to contact the other party. The parties agree to exchange such information as is necessary to keep each other informed as to the schedules of each others vessels and the types of cargo they may accommodate.

(3) The Commission receives, within 60 days of the date of this order, a complete copy of Agreement No. 9939-2 as modified as required by this Order, and signed by the parties.

It is further ordered, That the approval *pendente lite* of Agreement No. 9939-2 and Agreement No. 9939-3 shall become effective on the date the Commission receives a complete copy of Agreement No. 9939-2 as modified as required by this order;

It is further ordered, That Agreement No. 9939-2 supersedes and cancels Agreement No. 9939 and that the approval *pendente lite* of Agreement No. 9939 shall cease on the effective date of the approval *pendente lite* of Agreement No. 9939-2;

It is further ordered, That pursuant to sections 15 and 22 of the Shipping Act, 1916, Agreement No. 9939-2 is made the subject of this proceeding to determine whether it is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, detrimental to the commerce of the United States, contrary to the public interest, or in violation of the Shipping Act, 1916, and therefore, whether it should be approved, disapproved, or modified;

It is further ordered, That the parties address themselves to issues specifically enumerated below in addition to those set forth above:

1. What are the exact provisions of cargo preference laws of Peru (including

any implementing decrees etc.) and what, if any, changes have been made to the laws since approval of Agreement No. 9939?

2. What effect have the cargo preference laws of Peru had on past and present third flag carriers in the trade?

3. What effect have the cargo preference laws of Peru had on past and present United States flag carriers in the trade?

4. Did approval of Agreement No. 9939 exacerbate any competitive disadvantages faced by third flag carriers in the trade as a result of the cargo preference laws of Peru?

5. Whether the equal access provision of Agreement No. 9939-2 is contrary to the public interest in that it is in furtherance of discriminatory and anticompetitive laws of the Government of Peru?

It is further ordered, That this proceeding move forward without regard to other proceedings involving the cargo preference laws of other nations.

It is further ordered, That (1) a copy of this order be forthwith served upon the respondents and petitioner herein, and upon the Commission's Bureau of Hearing Counsel, and published in the FEDERAL REGISTER, and (2) the respondents, petitioner, and Hearing Counsel be duly served with notice of the time and place of hearing.

All persons (including individuals, corporations, associations, firms, partnerships and public bodies) having an interest in this proceeding and desiring to intervene herein should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(1) of the Commission's Rules of Practice and Procedure (46 CFR § 502.72) with a copy to all parties to the proceeding.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

APPENDIX

Prudential Lines, Inc., One World Trade Center, Suite 3601, New York, New York 10048.
Compania Peruana De Vapores, 17 Battery Place, 21st Floor, New York, New York 10004.

Westfal-Larsen Line, General Steamship Corporation, Ltd., General Agents, 400 California Street, San Francisco, California 94104.

[FR Doc.76-32936 Filed 11-8-76;8:45 am]

[Independent Ocean Freight Forwarder License No. 1720]

TRANS MAR CORP.

Order of Revocation

By letter dated September 28, 1976, Mr. F. Ernesto Lugo, President, Trans Mar Corporation, c/o Wheeler & Wheeler, Attorneys At Law, 2800 International Trade Mart, New Orleans, Louisiana 70130 was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1720 would be automatically revoked or suspended unless a valid surety bond was

filed with the Commission on or before October 28, 1976.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Trans Mar Corporation has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) section 5.01 (c) dated June 30, 1975;

It is ordered, That Independent Ocean Freight Forwarder License No. 1720 issued to Trans Mar Corporation be returned to the Commission for cancellation.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1720 be and is hereby revoked effective October 28, 1976.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Trans Mar Corporation.

LEROY F. FULLER,
Director, Bureau of
Certification and Licensing.

[FR Doc.76-32938 Filed 11-8-76;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. RP74-61; (PGA77-1)]

ARKANSAS LOUISIANA GAS CO.

Filing of Revised Tariff Sheets

NOVEMBER 1, 1976.

Take notice that on October 12, 1976, Arkansas Louisiana Gas Company tendered for filing in Docket No. RP74-61 (PGA) Tenth Revised Sheet No. 4 in its Rate Schedule G-2, FPC Gas Tariff, First Revised Volume No. 1. This tariff sheet and supporting information are being mailed more than 30 days before the effective date of November 15, 1976.

The proposed tariff sheet is being filed pursuant to the purchased gas cost adjustment provisions contained in Arkla's Tariff and Order Nos. 452, 452-A and 452-B which permits Arkla to track concurrently, increases in its cost of gas due to pipeline supplier rate changes. The change in Arkla's rates proposed by this filing reflects a cost of gas adjustment that tracks rate increases filed by four of Arkla's pipeline suppliers, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, Texas Eastern Transmission Corporation and United Gas Pipe Line Company, as a result of the increased cost of gas from Opinion 770.

The company states that copies of the revised tariff sheet and supporting data are being mailed to Arkla's jurisdictional customers and other interested parties effected by the tariff change.

Any person desiring to be heard or to protest said filing should file a Petition to

Intervene or Protest with the Federal Power Commission 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 19, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32847 Filed 11-8-76;8:45 am]

[Docket No. RP76-10, (PGA77-1)]

ARKANSAS LOUISIANA GAS CO.

Filing of Revised Tariff Sheets

NOVEMBER 1, 1976.

Take notice that on October 12, 1976, Arkansas Louisiana Gas Company tendered for filing in Docket RP76-10 (PGA) Seventh Revised Sheet No. 185 in its Rate Schedule X-26, FPC Gas Tariff Original Volume No. 3. This tariff sheet and supporting information are being mailed more than 30 days before the effective date of November 15, 1976.

The proposed tariff sheet is being filed pursuant to the purchased gas cost adjustment provisions contained in Arkla's Tariff and Order Nos. 452, 452-A and 452-B which permits Arkla to track concurrently, increases in its cost of gas due to pipeline supplier rate changes. The change in Arkla's rates proposed by this filing reflects a cost of gas adjustment that tracks rate increases filed by four of Arkla's pipeline suppliers, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, Texas Eastern Transmission Corporation and United Gas Pipe Line Company, as a result of the increased cost of gas from Opinion 770.

The company states that copies of the revised tariff sheet and supporting data are being mailed to Arkla's jurisdictional customers and other interested parties effected by the tariff change.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Power Commission 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 19, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32849 Filed 11-8-76;8:45 am]

[Project No. 201]

CITY OF PETERSBURG, ALASKA

Issuance of Annual License(s)

NOVEMBER 1, 1976.

On November 12, 1975, the City of Petersburg, Alaska, Licensee for the Blind Slough Project No. 201, located on Crystal Creek in the Wrangell-Petersburg Census Division of Mitkof Island near the City of Petersburg, Alaska, filed an application for a new major license pursuant to the Federal Power Act and Commission Regulations thereunder.

The license for Project No. 201 was issued effective November 13, 1974, for a period ending November 12, 1974. Since expiration of the original license, the project has been maintained and operated under annual licenses, the most recent of which will expire on November 12, 1976. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to the City of Petersburg, Alaska.

Take notice that an annual license is issued to the City of Petersburg, Alaska, for the period November 13, 1976, to November 12, 1977, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Blind Slough Project No. 201 subject to the terms and conditions of the original license. Take further notice that if issuance of a new license does not take place on or before November 12, 1977, a new annual license will be issued each year thereafter effective November 13 of each year, until such time as a new license is issued, without further notice being given by the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32843 Filed 11-8-76;8:45 am]

[Docket No. RP76-95]

COLUMBIA GAS TRANSMISSION CORP.

Proposed Changes in FPC Gas Tariff

NOVEMBER 1, 1976.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 26, 1976, tendered for filing the following revised tariff sheet to its FPC Gas Tariff, Original Volume No. 1, to become effective November 1, 1976:

Substitute Thirty-third Revised Sheet No. 16

Columbia states that Substitute Thirty-third Revised Sheet No. 16 is necessary in order to place the proper rate into effect on November 1, 1976, the end of the suspension period. The rates contained in the subject tariff sheet have been revised from Columbia's earlier filing of October 1, 1976, to give effect to the exclusion of Columbia's special one-time Purchased Gas Adjustment Filing under Opinion No. 770, since the effective date of such PGA filing was deferred until December 1, 1976, by Commission order issued October 21, 1976, at Docket No. RP72-110, et al.

Copies of this filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before November 24, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32848 Filed 11-8-76;8:45 am]

[Docket Nos. E-9521 and E-9522]

GEORGIA POWER CO.

Further Extension of Procedural Dates

NOVEMBER 1, 1976.

On October 27, 1976, Georgia Power Company filed a motion to extend the procedural dates, fixed by order issued October 29, 1975, as most recently modified by notice issued September 2, 1976, in the above-designated proceeding. The motion states that parties to the proceeding have no objection.

Upon consideration, notice is hereby given that the procedural dates in the above proceeding are modified as follows:

Service of Company Rebuttal, November 29, 1976

Hearing, December 20, 1976

By direction of the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-32837 Filed 11-8-76;8:45 am]

[Docket No. ER77-26]

ILLINOIS POWER CO.

Filing Modification No. 2

NOVEMBER 1, 1976.

Take notice that on October 20, 1976 Illinois Power Company ("Illinois Power") tendered for filing proposed Modification No. 2 to the Interconnection Agreement ("Agreement") dated August 26, 1974, between Illinois Power and the City of Highland. The Commission has previously designated the August 26, 1974 Agreement as Illinois Power Rate Schedule FPC No. 72.

Illinois Power states that Modification No. 2 provides for a proposed increase in the demand charges for Short-Term Firm Capacity and Maintenance Capacity transactions. An effective date of November 20, 1976 is requested.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North

Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 or 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 12, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32842 Filed 11-8-76;8:45 am]

[Docket No. ER77-24]

ILLINOIS POWER CO.
Filing Modification No. 2

NOVEMBER 1, 1976.

Take notice that on Oct. 20, 1976, Illinois Power Company ("Illinois Power") tendered for filing proposed Modification No. 2 to the Interconnection Agreement ("Agreement") dated August 13, 1974, between Illinois Power and the Cities of Breese, Illinois and Carlyle, Illinois. The Commission has previously designated the August 13, 1974 Agreement as Illinois Power Rate Schedule FPC No. 70.

Illinois Power states that Modification No. 2 provides for a proposed increase in the demand charges for Short-Term Firm Capacity and Maintenance Capacity transactions. An effective date of November 20, 1976 is requested.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 or 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 12, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32844 Filed 11-8-76;8:45 am]

[Docket No. ER77-23]

ILLINOIS POWER CO.
Filing Modification No. 2

NOVEMBER 1, 1976.

Take notice that on October 20, 1976 Illinois Power Company ("Illinois Power") tendered for filing proposed Modification No. 2 to the Interconnection Agreement ("Agreement") dated August 19, 1974, between Illinois Power

and the City of Mascoutah. The Commission has previously designated the August 19, 1974 Agreement as Illinois Power Rate Schedule FPC No. 71.

Illinois Power states that Modification No. 2 provides for a proposed increase in the demand charges for Short-Term Firm Capacity and Maintenance Capacity transactions. An effective date of November 20, 1976 is requested.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 or 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 12, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32845 Filed 11-8-76;8:45 am]

[Docket No. ER77-25]

ILLINOIS POWER CO.
Filing Modification No. 2

NOVEMBER 1, 1976.

Take notice that on October 20, 1976 Illinois Power Company ("Illinois Power") tendered for filing proposed Modification No. 2 to the Interconnection Agreement ("Agreement") dated August 5, 1974, between Illinois Power and the Village of Freeburg, Illinois. The Commission has previously designated the August 5, 1974 Agreement as Illinois Power Rate Schedule FPC No. 66.

Illinois Power States that Modification No. 2 provides for a proposed increase in the demand charges for Short-Term Firm Capacity and Maintenance Capacity transactions. An effective date of November 20, 1976 is requested.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 or 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 12, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32846 Filed 11-8-76;8:45 am]

[Docket No. E-8494]

MINNESOTA POWER AND LIGHT CO.

Further Extension of Time

OCTOBER 29, 1976.

On October 29, 1976, Staff Counsel filed a motion to further extend the date for filing Briefs on Exceptions to the Initial Decision, issued September 1, 1976, in the above-designated matter.

Upon consideration, notice is hereby given that the date for filing Briefs on Exceptions is extended to and including November 5, 1976, and the date for filing Briefs Opposing Exceptions is extended to and including November 24, 1976.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32835 Filed 11-8-76;8:45 am]

[Docket No. RP76-91]

MONTANA-DAKOTA UTILITIES CO.
Filing of Substitute Tariff Sheets

NOVEMBER 1, 1976.

Take notice that on October 18, 1976, Montana-Dakota Utilities Co. (MDU), 400 North Fourth Street, Bismark, North Dakota 58501, filed in Docket No. RP76-91 certain tariff sheets which MDU proposes to replace tariff sheets constituting a part of MDU's proposed curtailment plan.

On April 26, 1976, and May 18, 1976, MDU filed with the Commission certain original and substitute original tariff sheets to its FPC Gas Tariff, First Revised Volume No. 1, and certain original and revised tariff sheets to its FPC Gas Tariff, Original Volume No. 4.¹ The tariff sheets constitute MDU's then-proposed curtailment plan. By order issued June 17, 1976, such tariff sheets were accepted for filing and suspended until October 1, 1976, and the matter of the justness and reasonableness of MDU's curtailment plan was set for hearing. MDU has not previously filed to place the suspended tariff sheets into effect.

MDU states that as a result of a settlement conference in this proceeding agreement was reached between MDU and the customer-intervenors as to certain revisions in the curtailment plan which are the subject of a settlement proposal filed with the Commission on August 31, 1976.² MDU is now seeking, by means of the subject substitute tariff sheets, to put the changes agreed upon in the settlement into effect as if they had originally been filed, suspended, and set for hearing. MDU states that the tariff sheets filed herewith are identical in substance with the tariff sheets filed on August 31, 1976, with the following exceptions:

¹ Notice of MDU's original tariff filing in Docket No. RP76-91 was published in the FEDERAL REGISTER on May 10, 1976, (41 FR 19159), and notice of the amendment thereto was published in the FEDERAL REGISTER on May 28, 1976 (41 FR 21840).

² Notice of the settlement proposal was published in the FEDERAL REGISTER on September 17, 1976, (41 FR 40253).

A new § 2.10, Interim Restriction on Growth, appears on Original Sheet No. 56. This provision enforces through the means of MDU's tariff the interim restriction on growth agreed to in the settlement.

A new § 2.11, Changes to Index of Base Period Requirements, recognizes that MDU may have overlooked changes to certain customers' base period requirements which may be required in order to conform with the principles of the settlement. The proposed § 2.11 states that MDU may make further changes in the Index of Base Period Requirements if such revisions are later found to be necessary.

The revised tariff sheets also provide for several changes in base period requirements as more fully detailed in the subject filing of MDU.

MDU requests, pursuant to section 4(e) of the Natural Gas Act and § 154.66 of the Commission's Regulations thereunder, permission to withdraw certain of the suspended tariff sheets and to replace them with the subject substitute tariff sheets as follows:

SUSPENDED TARIFF SHEETS TO BE WITHDRAWN

Original sheet No. 51.
Original sheet No. 53.
Original sheet No. 54.
Original sheet Nos. 55-99.
Substitute original sheet Nos. 100-110.

SUBSTITUTE TARIFF SHEETS TO REPLACE WITHDRAWN SHEETS

Substitute original sheet No. 51.
Substitute original sheet No. 53.
Substitute original sheet No. 54.
Substitute original sheet No. 55.
Original sheet No. 56.
Original sheet Nos. 57-99.
Third substitute original sheet No. 100.
Revised second substitute original sheet No. 101.
Second substitute original sheet No. 102.
Revised second substitute original sheet No. 103.
Third substitute original sheet No. 104.
Third substitute original sheet No. 105.
Third substitute original sheet No. 106.
Revised second substitute original sheet No. 107.
Second substitute original sheet No. 108.
Third substitute original sheet No. 109.
Third substitute original sheet No. 110.

By a separate but concurrently filed motion,³ MDU requests, pursuant to Section 4(e) of the Natural Gas Act, permission to place the subject substitute tariff sheets and those suspended tariff sheets which are not being withdrawn into effect as of October 18, 1976, and MDU requests waiver of such Rules and Regulations as may be necessary to permit such effective date. MDU states that it recognizes that the substitute tariff sheets will be treated as if they had been suspended and set for hearing if the Commission permits them to go into effect.

³ The motion is styled: "Request for Permission to Withdraw Certain Suspended Tariff Sheets and for Permission to Put Substitute Tariff Sheets Into Effect and Related Motion Pursuant to section 4(e) of the Natural Gas Act."

MDU claims that effectuating the substitute tariff sheets would allow certain customers, which do not have installed alternative fuel capability, to exempt themselves from curtailment this winter and certain other customers to exempt themselves while installing alternate fuel capability. MDU summarizes the net effect of the changes in base period requirements incorporated in the substitute tariff sheets as follows:

	Suspended tariff sheets	Substitute tariff sheets
Priority 2.....	2,034,778	3,770,394
Priority 3.....	1,173,990	1,061,862
Priority 4.....	18,475,853	18,253,603
Total.....	21,684,621	23,094,859

Any person desiring to be heard or to make any protest with reference to the proposed tariff substitutions should on or before November 12, 1976, file with the Federal Power Commission, Washington, D.C., a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32840 Filed 11-8-76; 8:45 am]

NATIONAL FUEL GAS SUPPLY CORP. Petition To Amend

NOVEMBER 1, 1976.

Take notice that on September 13, 1976, National Fuel Gas Supply Corporation (Petitioner), 308 Seneca Street, Oil City, Pennsylvania 16301, filed in Docket No. CP75-348 a petition¹ to amend the order of May 7, 1976, issuing a certificate of public convenience and necessity in said docket pursuant to section 7(c) of the Natural Gas Act, by which petition Petitioner requests authorization to continue the storage service being supplied by Petitioner to Lowell Gas Company (Lowell) and Elizabethtown Gas Company (Elizabethtown) for a limited period, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Petitioner requests by this petition that its "Motion to Amend Order Issuing Temporary Certificate of Public Con-

¹ The filing was tendered September 13, 1976; however, the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until October 28, 1976. Thus, filing was not completed until the latter date.

² The filing is in the form of a letter modifying a motion filed March 30, 1976.

venience and Necessity" filed March 30, 1976, in the instant docket be deemed to move for amendment of the Commission's order of May 7, 1976, instead of the order issuing a temporary certificate on July 25, 1975.

The storage service for Elizabethtown involves transportation service by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), whereby Elizabethtown reduces its purchases from Transcontinental Gas Pipe Line Corporation (Transco) by up to 10,000 Mcf of gas per day; and delivers equivalent daily volumes to Columbia Gas Transmission Corporation (Columbia). Columbia makes equivalent daily volumes available to Tennessee by reducing its contract demand purchases from Tennessee at Tennessee's South Ceredo, West Virginia, delivery point to Columbia, and Tennessee transports and delivers equivalent volumes to Petitioner for storage for the account of Elizabethtown at the Ellensburg, Pennsylvania, delivery point.

The storage service for Lowell involves transportation service by Tennessee whereby Lowell makes daily volumes of up to 12,500 Mcf of gas available to Tennessee during the summer by reducing its takes of contracted demand purchases from Tennessee at the Tewksbury, Massachusetts, delivery point to Lowell; and Tennessee then delivers equivalent daily volumes to Petitioner at Ellensburg, Pennsylvania. During the winter, Tennessee receives daily volumes of up to 12,500 Mcf from Petitioner for Lowell's account at the Ellensburg delivery point and delivers equivalent volumes to Lowell at the Tewksbury delivery point.

Petitioner proposes to render the storage service for Elizabethtown during the period, April 1, 1976, through October 31, 1977, limited to an aggregate amount of 1,500,000 Mcf storage capacity, receipt and redelivery of which are limited to a maximum of 10,000 Mcf per day. Petitioner proposes to render the storage service for Lowell during the period, April 1, 1976, through March 31, 1977, limited to an aggregate amount of 1,500,000 Mcf storage capacity, the daily receipt and redelivery of which would not exceed 12,500 Mcf.

Petitioner requests that the rate charged for the extension of service be established at 40.77 cents per Mcf of gas. No additional facilities are required or proposed, it is said.

It is asserted that Elizabethtown requires the storage service proposed herein as a means of safeguarding an adequate supply of gas to meet the requirements of its customers. Also, it is stated that the proposed storage service is essential to Lowell's ability to serve adequately the requirements of Priority 1 and 2 customers during the 1976-77 winter. It is said that these customers are estimated to require approximately 2,200,000 Mcf of gas in addition to the volumes expected to be available from Lowell's pipeline supplier, Tennessee, during the November 1976 through March 1977 winter period, assuming normal temperatures, and that Lowell plans

to make up for this deficiency through utilization of underground storage and supplemental gases. Petitioner states that during each of the past three years, Lowell has obtained underground storage service on a year-to-year basis and has been able to meet its customer requirements in this manner and that, without a continuation of this service, Lowell's consumers would be faced with possible loss of gas service and increased costs for substitute fuels.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 22, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32841 Filed 11-8-76; 8:45 am]

[Docket No. E-9560]

OHIO ELECTRIC CO.

Motion To Withdraw From Proceeding

NOVEMBER 1, 1976.

Take notice that on October 7, 1976, Ormet Corporation (Ormet) filed a motion for an order by the Federal Power Commission permitting withdrawal of its Complaint and Petition in the above-captioned proceeding. Ormet states that it is moving to withdraw from this proceeding on the basis of: (1) a favorable decision of the Public Utilities Commission of Ohio is Case No. 75-060-EL-SLF, concerning service to Ormet by Ohio Power Company, and (2) its belief that its continued participation herein " . . . will impose a strain upon Ormet's continuing business relationship with Ohio Power and will generate significant legal and other expenses."

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 23, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this

filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32838 Filed 11-8-76; 8:45 am]

[Docket No. ER77-5]

OTTER TAIL POWER CO.

Extension of Time

OCTOBER 29, 1976.

On October 22, 1976, the Towns of Alexandria, Barnesville, Benson, Detroit Lakes, Henning, Lake Park, Ortonville, Tyler and Warren, Minnesota and Big Stone City, South Dakota, filed a motion to extend the time for responding to Otter Tail Power Company's rate filings and to object to the Company's notice of cancellation, in the above-designated proceeding.

Upon consideration, notice is hereby given that the time within which the Towns must respond to the Company's rate filing, and object to the Company's notice of cancellation is extended to and including November 19, 1976.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-32834 Filed 11-8-76; 8:45 am]

[Docket No. E-9496]

UNION ELECTRIC CO.

Report of Refunds

NOVEMBER 1, 1976.

Take notice that Union Electric Company (Union) tendered for filing by letter dated October 21, 1976 a report of refunds pursuant to Ordering Paragraph (D) of the Order Accepting Settlement Agreement dated June 7, 1976 in the referenced proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 19, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32839 Filed 11-8-76; 8:45 am]

[Docket No. RP75-109]

UNITED GAS PIPE LINE CO.

Postponement of Procedural Dates

NOVEMBER 1, 1976.

On September 23, 1976, United Gas Pipe Line Company filed a motion to

postpone the procedural dates fixed by order issued July 7, 1975, as most recently modified by notice issued July 16, 1976, in the above-designated proceeding.

Notice is hereby given that the procedural dates in the above-designated matter are postponed pending the outcome of the settlement conference.

By direction of the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-32836 Filed 11-8-76; 8:45 am]

[Docket No. AR642, etc.]

AREA RATE PROCEEDING, ET AL.

Order Granting Rehearing for Purposes of Further Consideration

OCTOBER 29, 1976.

In the matter of Area Rate Proceeding, et al. (Texas Gulf Coast Area), Docket Nos. AR64-2, et al., Blanco Oil Co. (Operator), et al., Docket Nos. CI61-618, et al., Exxon Corp., Docket Nos. CI 62-704, et al.

Shell Oil Company on September 28, 1976, and the Estate of Mrs. James R. Dougherty on October 1, 1976, have filed applications for rehearing; Marathon Oil Company on October 13, 1976, has filed an application for reconsideration; and Austral Oil Company, on October 12, 1976, has filed a petition for clarification with respect to the Commission's order of September 3, 1976, in the above-entitled proceeding determining the computation of refunds. The applications for rehearing raise a number of issues, which require further consideration by the Commission than is afforded by the statutory 30-day period.

The Commission finds:

The applications for rehearing filed by Shell and Dougherty should be granted for further consideration.

The Commission orders:

The applications for rehearing filed by Shell and Dougherty are hereby granted for purposes of further consideration.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32944 Filed 11-8-76; 8:45 am]

[Docket No. ES76-81]

BALTIMORE GAS & ELECTRIC CO.

Application

NOVEMBER 2, 1976.

Take notice that on September 30, 1976, Baltimore Gas and Electric Company (Applicant) filed an Application with the Federal Power Commission seeking authority to increase to \$200 million the amount of short-term unsecured promissory notes, including commercial paper notes, which it may have outstanding at any one time and to extend to December 31, 1978 the latest maturity date of notes to be issued pursuant thereto.

¹ Marathon's application is not timely as an application for rehearing.

The Commission authorized the issuance of short-term unsecured promissory notes by the Applicant in its order dated June 13, 1969 and supplemental orders dated September 24, 1970, December 22, 1972, December 21, 1973, November 1, 1974, and November 11, 1975. In the supplemental order dated November 11, 1975, the Commission authorized the Applicant to issue short-term unsecured promissory notes in face amounts of up to a maximum of \$160 million with maturities not later than December 31, 1977.

Applicant is incorporated under the laws of the State of Maryland with its principal business office at Baltimore, Maryland, and is engaged in the electric, gas and steam utility businesses within the State of Maryland. The Applicant has qualified to do business also in the Commonwealth of Pennsylvania where it is participating in the ownership and operation of two mine-mouth electric generating plants.

Short-term unsecured promissory notes are to be issued from time to time to banking institutions and/or sold to or through dealers in commercial paper of which the aggregate amount to be outstanding at any one time as commercial paper is not to exceed 25% of the Applicant's gross revenues during the preceding twelve months. Short-term unsecured promissory notes in the form of commercial paper will mature in no more than 270 days and all other such notes will have maturities of up to one year from the date of issuance.

The proceeds from the issuance of short-term unsecured promissory notes will be used to provide funds for current corporate transactions, including interim financing of the Applicant's construction program. Construction expenditures are expected to total approximately \$170 million in 1976 and are estimated at \$180 million and \$235 million for 1977 and 1978, respectively. Expenditures for nuclear fuel are estimated at \$15 million, \$35 million and \$60 million for the years 1976, 1977 and 1978, respectively.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 26, 1976, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32963 Filed 11-8-76;8:45 am]

[Docket Nos. E-9570 & ER76-924]

DELMARVA POWER & LIGHT CO.

Order Authorizing the Sale of Certain Electrical Facilities, Accepting Service Agreement for Filing and Terminating Proceeding

OCTOBER 29, 1976.

On September 28, 1976, Delmarva Power and Light Company of Maryland (Delmarva) filed with the Federal Power Commission an Application for authority under Section 203 of the Federal Power Act to sell its Berlin Substation to the Mayor and Council of Berlin (Berlin) for \$85,886.37, and simultaneously, pursuant to Section 35.13 of the Commission's Regulations, filed a superseding Service Agreement with Berlin.

Delmarva is incorporated under the laws of the State of Maryland, with its principal business office at Salisbury, Maryland. Delmarva serves at wholesale for resale, and at retail, throughout the nine counties of Maryland commonly described as The Eastern Shore of Maryland, and owns and operates generation, transmission and distribution facilities throughout such territory.

The Mayor and Council of Berlin is a Maryland municipal corporation, operating an electric utility within its municipal boundaries and is at present a wholesale for resale customer of Delmarva under Delmarva's FPC Electric Tariff Volume No. 6 and under a Service Agreement executed on March 23, 1976, and filed pursuant to said Tariff. Delmarva presently serves Berlin as a Low Tension Service customer under the foregoing Tariff and attendant Service Agreement.

In its Application Delmarva asserts that the effect of the foregoing sale of its facilities to Berlin is to enable Berlin to provide within its own system the capability of stepping down electric energy delivered to it at the higher voltage of High Tension Service to the lower voltage of its distribution system. This step-down transformation capability, now being performed by Delmarva, will enable Berlin to obtain service at High Tension Service, as defined in Delmarva's current FPC Tariff, and to secure a reduction in the rates charged by Delmarva.

The tendered Service Agreement between Delmarva and Berlin, filed simultaneously by Delmarva as a Rate Schedule change in Docket ER76-924, reflects service to Berlin at High Tension Service, and is subject to Commission approval of the above-described Section 203 transaction. Subject to said approval, Delmarva has agreed to sell and Berlin has agreed to purchase the Berlin Substation for \$85,886.37. Delmarva requests an effective date of November 1, 1976, for said Service Agreement.

The foregoing purchase price is the mutually agreed upon fair value of the

¹ Designated as Delmarva Power and Light Company of Maryland, Service Agreement under FPC Electric Tariff Original Volume 6 (Superseding Service Agreement dated March 23, 1966).

subject facilities, and is equal to the trended original cost, \$168,182.63, less the trended depreciation, \$82,296.26. The current net book value of the subject facilities is \$49,325.35 and is equal to the original cost, \$95,095.19, less the applicable depreciation as of August 31, 1976, \$45,769.84. Delmarva has not indicated how it proposes to account for the \$36,561.02 gain it will realize on final disposition of the subject facilities.

Commission Staff review of Delmarva's Application regarding service at low and high tension to Berlin indicates that Berlin will save \$39,182 in 1976, and \$41,540 in 1977. Although Delmarva will receive more than the net book value of the facilities, Staff is of the view that the subject sale is consistent with the public interest provided Delmarva is required to credit its gain on final disposition of the facilities to Account 421.1, Gain on Disposition of Property, in the year of the sale.

Commission Staff review of the Service Agreement filed herein as a Rate Schedule change by Delmarva, indicates that only a change in delivery voltage to an existing wholesale customer under an established Delmarva Electric Tariff will occur. Accordingly, said Service Agreement will be accepted for filing to become effective on November 1, 1976, as requested. Such acceptance for filing shall terminate Docket ER76-924.

Written notice of the instant filings has been sent to the Maryland Public Service Commission. Notice was also given by publication in the FEDERAL REGISTER, stating that any person desiring to be heard or to make any protest with reference to said filings, should on or before October 22, 1976, in Docket No. E-9570, and on or before October 26, 1976, in Docket No. ER76-924, file petitions or protests, with the Federal Power Commission, Washington, D.C. 20426. No petition, protest or request to be heard in opposition to the filings has been received.

The Commission finds:

(1) Delmarva, a corporation, is a public utility within the meaning of Sections 203 and 205 of the Federal Power Act, subject to the jurisdiction of the Commission.

(2) The proposed sale of electric facilities, as described herein, will constitute a transaction within the meaning of Section 203 of the Federal Power Act.

(3) The proposed sale of electric facilities, as described herein, upon the terms and conditions and for the purposes set forth in the Application will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) Good cause exists to accept the tendered Service Agreement between Delmarva and Berlin for filing and to allow said agreement to become effective on November 1, 1976, as requested.

(5) Good cause exists to terminate Docket No. ER76-924.

(6) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed transaction regarding the sale of certain electric facilities as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the Application for such authorization, subject to the provisions of this order.

(B) Delmarva shall record the net gain of \$36,561.02 on the above transaction to Account 421.1, Gain on Disposition of Property.

(C) Delmarva shall record the proposed transaction herein authorized and the electric facilities described above as provided in the Commission's Uniform System of Accounts.

(D) The foregoing authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(E) The Service Agreement between Delmarva and Berlin filed in Docket No. ER76-924 and which supersedes the existing Service Agreement between the foregoing parties under Delmarva's FPC Electric Tariff Original Volume No. 6, is hereby accepted for filing to become effective November 1, 1976.

(F) The proceeding in Docket No. ER76-924 is hereby terminated.

(G) The foregoing authorization pursuant to Section 203 of the Federal Power Act and the foregoing acceptance for filing in Docket No. ER76-924, are without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission.

(H) Nothing in this order shall be construed to imply acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32953 Filed 11-8-76; 8:45 am]

[Docket No. CP73-258]

EL PASO EASTERN CO.

Amendment

NOVEMBER 1, 1976.

Take notice that on October 15, 1976, El Paso Eastern Company (Applicant), P.O. Box 1440, Houston, Texas 77001, filed an amendment to its pending application in Docket No. CP73-258 pursuant to Section 3 of the Natural Gas Act for authorization to import a quantity of liquefied natural gas (LNG) to be produced in Algeria, all as more fully set forth in the amendment on file with the Commission and open to inspection.

Applicant states that in its original application it proposed to import annually a quantity of LNG containing approximately 153,984,375 million Btu's or the equivalent of approximately 375,000 Mcf of natural gas daily (at 1125 Btu's per

cubic foot). It is stated that such LNG was to have been produced in Algeria by Societe Nationale SONATRACH (Sonatrach) and was to have been purchased by El Paso Algeria Corporation (El Paso Algeria). It is also stated that El Paso Algeria was to have arranged for the transportation of such LNG from Arzew, Algeria, to the United States.

It is stated that Applicant was to have purchased said LNG on the high seas from El Paso Algeria and the LNG was to have been delivered to facilities to be constructed, owned and operated by Transco Terminal Company (Transco Terminal) in Gloucester County, New Jersey. The resultant natural gas was to have been delivered to Transcontinental Gas Pipe Line Corporation (Transco Pipe Line) by Transco Terminal for Applicant's account in exchange for the delivery by Transco Pipe Line to El Paso Natural Gas Company (El Paso Natural), purchaser from Applicant, at a point in Refugio County, Texas, of a volume of natural gas containing equivalent Btu content. It is stated.

Applicant now proposes to import the quantities it has contracted to purchase from El Paso Atlantic Company (Atlantic), the successor to El Paso Algeria, consisting of an annual quantity of LNG containing 410,625,000 million Btu's or the equivalent to approximately 1,000,000 Mcf of natural gas daily (at 1125 Btu's per cubic foot), for a 20-year period after an initial buildup period. It is stated that said LNG would be produced in Algeria by Sonatrach and would be purchased by Atlantic from Sonatrach f.o.b. at ship's rail, Algeria. It is indicated that Atlantic will arrange for the transportation of said LNG from Algeria.

It is stated that said LNG would be purchased by Applicant from Atlantic aboard LNG carriers on the high seas at the point where the LNG carriers first enter international waters after departure from Algeria en route to the United States, and would be delivered to the unloading, storage, and vaporization facilities to be constructed, owned and operated by El Paso LNG Terminal Company (LNG Terminal) on the Texas Gulf Coast. It is further stated that the resultant natural gas, less terminal losses and usage, and less certain liquid hydrocarbons which may be extracted by Atlantic, would be sold by Applicant and delivered at the outlet of LNG Terminal's facilities by LNG Terminal for Applicant's account, sixty-five percent to El Paso Natural Gas and thirty-five percent to United LNG Company, a subsidiary of United Gas Pipe Line Company.

It is stated that the natural gas to be liquefied by Sonatrach would be produced, gathered and transported to its liquefaction plant, principally from the Hassi R' Mel Gas Field approximately 315 miles southeast of Arzew. However, it is indicated that Sonatrach's obligation to liquefy and deliver the contracted supply of LNG to El Paso Algeria is not limited to natural gas sources in the Hassi R' Mel Gas Field but is supported

by all existing and future natural gas fields in Algeria. It is asserted that the aggregate remaining recoverable gas reserves available to Sonatrach as of January 1, 1973, are estimated to approximate 85 trillion cubic feet and that such reserves are adequate to meet all of Sonatrach's existing contractual commitments and the projected internal needs of Algeria throughout the term of the project.

It is indicated that the base freight rate which Applicant would pay to Atlantic would be approximately \$0.88 per million Btu's loaded in Algeria, subject to increases and decreases in capital costs, interest rates and the U.S. Federal income tax rate. In addition, it is indicated that Atlantic's operating expenses are to be paid monthly by Applicant.

It is asserted that the cost of the LNG to Applicant is currently estimated to be \$2.18 plus about \$0.175 for each million Btu if operating expenses were to be stated on a "unit" basis, for a total of about \$2.36. It is also stated that Applicant has agreed to pay LNG Terminal a monthly charge based upon the costs associated with the facilities of LNG Terminal utilized for unloading, storage, and vaporization of Applicant's LNG on the Texas Gulf Coast.

It is stated that based upon the present LNG import schedule, the initial deliveries to Applicant during the buildup period are expected to commence in 1983, with the date of First Regular Delivery, as defined in the contract between Sonatrach and Atlantic, expected to be in early 1984. It is asserted that the proposed importation of LNG into the United States will provide a substantial long-term supply of environmentally desirable gas for use in market areas served by El Paso's and United's interstate systems.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 26, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Parties who have heretofore filed need not do so again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32948 Filed 11-8-76; 8:45 am]

[Docket No. CI76-593]

JOSEPH L. HARGROVE, ET AL.

Withdrawal

NOVEMBER 1, 1976.

On October 26, 1976, Joseph L. Hargrove, et al., filed a motion to withdraw

its Application for Certificate of Public Convenience and Necessity, filed on May 21, 1976 in the above-designated proceeding.

Notice is hereby given that pursuant to Section 1.11(d) of the Commission's Rules and Regulations, the withdrawal of the above application shall become effective on November 26, 1976.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32949 Filed 11-8-76;8:45 am]

[Docket No. ES76-34]

IDAHO POWER CO.

Supplemental Order Approving the Guaranty of Notes

OCTOBER 29, 1976.

By order issued March 4, 1976, the Commission, pursuant to section 204 of the Federal Power Act, authorized the Idaho Power Company (Applicant) to assume liability as guarantor of the principal amount, not to exceed \$10 million at any one time, of notes to be issued by the American Falls Reservoir District (District), a political subdivision of the State of Idaho, such notes having maturities not to exceed one year and will be exempt from Federal income tax.

The Applicant by supplemental application filed on September 8, 1976, and amended on October 8, 1976, pursuant to section 204 of the Federal Power Act, seeks authority to increase the amount of the guaranty from \$10 million to \$35 million on notes to be issued by the District. Each note will mature not more than thirty-six (36) months after its issuance. All other terms and conditions previously authorized shall remain in full force and effect.

The proceeds from the notes will be used by the District to finance certain costs to be incurred with the reconstruction of the American Falls Dam and American Falls Storage Reservoir on the Snake River near American Falls, Idaho.

The notes will be issued and sold to a commercial bank or group of banks and each note will mature not later than thirty-six (36) months after its issuance. The effective interest cost will be determined by arms' length negotiation.

Written notice of the application has been given to the Idaho Public Service Commission, Oregon Public Utilities Commission, Nevada Public Utilities Commission, Wyoming Public Service Commission and to the Governor of each of those States. Notice was also given by publication in the FEDERAL REGISTER, stating that any person desiring to be heard or to make any protest with reference to the application should on or before October 10, 1976, file petitions or protests with the Federal Power Commission, Washington, D.C. 20426. No petitions, protests or requests to be heard in opposition to the granting of the application have been received.

The Commission finds: (1) The proposed amendment to the Commission's

order issued March 4, 1976, is reasonable and appropriate for the purposes of the Federal Power Act.

(2) The period of public notice given in this matter is reasonable.

The Commission orders: (A) The Commission's order of March 4, 1976, is hereby amended to authorize the Applicant to increase the amount of the guaranty from \$10 million to \$35 million on notes to be issued by the District. Each note shall mature not more than thirty-six (36) months from the date of issuance.

(B) All other terms and conditions as set forth in the Commission's order issued March 4, 1976, shall remain in full force and effect.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32954 Filed 11-8-76;8:45 am]

[Docket Nos. E-7740, et al.; ER76-716]

INDIANA AND MICHIGAN ELECTRIC CO.

Extension of Time

NOVEMBER 2, 1976.

On October 29, 1976, Commission Staff filed a motion to extend the time for filing comments on the settlement agreement, filed September 30, 1976, in the above-designated proceeding.

Upon consideration, notice is hereby given that the date for filing comments on the proposed settlement agreement is extended to and including December 6, 1976.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32962 Filed 11-8-76;8:45 am]

[Docket No. ER76-708]

INTERSTATE POWER CO.

Filing of Rate Schedule Supplement

NOVEMBER 2, 1976.

Take notice that on October 18, 1976, Interstate Power Company (Interstate) tendered for filing as a rate schedule supplement an amendment to its agreement with the City of Springfield, Minnesota (Springfield). Attached thereto is cost support data for the facilities charge under the agreement.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before November 15, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are

on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32956 Filed 11-8-76;8:45 am]

[Docket No. ER77-30]

KANSAS POWER AND LIGHT CO.

Proposed Changes in Rates and Charges

NOVEMBER 2, 1976.

Take notice that on October 26, 1976, The Kansas Power and Light Company (Kansas) tendered for filing a newly executed renewal contract dated October 7, 1975 with the City of Reserve, Kansas for wholesale service to that community. Kansas states that this is a renewal of a similar contract dated November 7, 1966 and designated KPL Rate Schedule FPC No. 92. The proposed effective date is December 1, 1976. According to Kansas, the net billing for the twelve months succeeding the proposed change in agreements was \$10,236.03. In addition, Kansas states that copies of the contract have been mailed to the City of Reserve and the State Corporation Commission of Kansas.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 19, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32957 Filed 11-8-76;8:45 am]

[Docket No. ER76-830]

MISSISSIPPI POWER & LIGHT CO.

Compliance Filing

NOVEMBER 2, 1976.

Take notice that on October 26, 1976, pursuant to ordering paragraph (D) of the Commission's order issued on August 27, 1976, in this docket, Mississippi Power & Light Company (MP&L) tendered for filing revised charges reflecting the elimination of construction work in progress (CWIP) from rate base. MP&L states that these revised charges will reduce revenue requirements from affected wholesale customers by 3.2% for the twelve-month period ending December 31, 1976.

MP&L states that copies of its filing were served upon all of its affected wholesale customers.

Any person desiring to be heard or to protest said filing should file comments with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 22, 1976. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32943 Filed 11-8-76; 8:45 am]

[Docket No. C176-732]

MITCHELL ENERGY CORP. V. KXB OIL CO.

Application

NOVEMBER 1, 1976.

On August 16, 1976, Mitchell Energy Corporation (Mitchell) filed a complaint against Sheffield A. Kadane, d/b/a K-B Oil Company (K-B), pursuant to section [18 CFR] 1.6 of the Commission's Rules of Practice and Procedure. The complaint alleges that K-B is attempting to abandon an existing interstate sale of natural gas to Mitchell in contravention of section 7(b) of the Natural Gas Act and requests that the Commission issue a show cause order against K-B or take other appropriate action.

The gas involved comes from K-B's A. B. Calloway Well No. 1 in Jack County, Texas. K-B has sold gas from this well to Mitchell since 1968. The contract provides that 53 percent of the price paid by the interstate pipeline be paid to K-B. The gas is gathered, compressed, processed, and sold by Mitchell to Natural Gas Pipeline Company of America under Mitchell's FPC Gas Rate Schedule No. 19. K-B asserts a right to terminate the contract because of alleged repeated late payments for gas. Mitchell maintains K-B has no basis for termination.

On October 7, 1976, K-B filed an answer to Mitchell's complaint requesting that the Commission permit it to abandon the sale to Mitchell because of the alleged contract violations or, in the alternative, permit such abandonment upon K-B's obtaining a favorable determination of the contract issued in the State courts. K-B states it is willing to continue the dedication of the reserves to interstate commerce through sales to another purchaser.

K-B states that "pending prompt action by the Commission upon the foregoing requests, K-B is willing to continue sales to Mitchell, without in any way waiving its remedies . . ." arising from the alleged contract breach.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before November 23, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas

Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Both Mitchell and K-B shall automatically be parties to this proceeding without necessity of filing petitions to intervene.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32947 Filed 11-8-76; 8:45 am]

[Docket No. CP74-162]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Petition To Amend

NOVEMBER 2, 1976.

Take notice that on October 15, 1976, Natural Gas Pipeline Company of America (Petitioner), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP74-162 a petition to amend the Commission's order issued April 2, 1975, in the instant docket by authorizing the addition of additional exchange points and an increase in maximum daily exchange volumes pursuant to an amendment to a gas exchange agreement dated September 24, 1973, between Petitioner and El Paso Natural Gas Company (El Paso), all as more fully set forth in said petition which is on file with the Commission and open to public inspection.

Petitioner states that by a long-term Gas Exchange Agreement dated September 24, 1973, as amended, Petitioner and El Paso agreed to exchange quantities of natural gas available and tendered from time to time by one to the other subject to quantity limits set forth therein. Petitioner further states that on April 2, 1975, the Commission issued an order in the instant docket authorizing the construction and operation of certain facilities to implement such exchange.

It is stated that Petitioner and El Paso executed on July 14, 1976, an Amended Agreement No. 5 to said Gas Exchange Agreement. It is stated that pursuant to the Amended Agreement No. 5 Petitioner now proposes to:

1. Redesignate the existing Beckham Exchange Point located in Section 34, T11N, R25W, Beckham County, Oklahoma, as the Beckham No. 1 Exchange Point.
2. Add a new Exchange point for deliveries to Petitioner from El Paso from the Kirtley Well in Section 24, T10N, R25W, Beckham County, Oklahoma (Beckham No. 2 Exchange Point).
3. Add a new exchange point for deliveries to Petitioner from El Paso in Section 14, T10N, R21W, Beckham County, Oklahoma (Beckham No. 3 Exchange Point).

4. Add new exchange points (collectively referred to as the Lockridge Field Well Exchange Point) involving eight split connection wells in the Lockridge Field where El Paso and Petitioner are both connected to each well to be utilized as a balancing point whereby Petitioner or El Paso by mutual agreement at some future date would permit the other party to take all or part of gas from such wells to correct any imbalance.

5. Deliver all gas Petitioner purchases and gatherings in the Warwink and Caprito (ROC) Fields, Ward County, Texas, to El Paso at the existing Worsham Exchange Point.

6. Increase maximum daily volumes for exchange to sixty five million (65,000,000) cubic feet per day from the previously authorized maximum of forty million (40,000,000) cubic feet per day.

It is stated that on July 16, 1976, Petitioner and El Paso executed Amended Agreement No. 6 to the Gas Exchange Agreement. Under that agreement Petitioner proposes to provide for an additional exchange point in Lea County, New Mexico (Lea No. 2 Exchange Point) whereby Petitioner would deliver gas it has available for purchase under an agreement with J. M. Huber Corporation from the Amoco State "FQ" Gas Com Well No. 1 located in Lea County, New Mexico. It is stated that El Paso is already connected to this well and therefore no new facilities would be required to effectuate the delivery.

The Petitioner asserts that the exchange agreement between Petitioner and El Paso is mutually beneficial to each party in that it provides a means for each party to connect remote sources of gas supply into their respective systems while obviating the necessity to construct and operate extensive and duplicate facilities otherwise required if they were to proceed independently. It is further asserted that the exchange will have no effect on any of the other sales or services now rendered by Petitioner.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 26, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32960 Filed 11-8-76; 8:45 am]

[Docket No. ER77-27]

NEVADA POWER CO.

Supplemental Letter Agreement

NOVEMBER 2, 1976.

Take notice that on October 21, 1976, Nevada Power Company (Nevada) tendered for filing a letter agreement dated September 15, 1976 which is supplemental to the Economy Energy Agreement with the City of Riverside dated July 1, 1976 and designated Nevada Power Company Rate Schedule FPC No. 20. The letter agreement provides for additional economy energy deliveries to Riverside during the initial contract year and will permit the replacement of oil-fired generation in the Los Angeles Basin area with coal-fired generation in Nevada.

Nevada requests an effective date as of November 1, 1976.

Copies of this filing were served upon Nevada's jurisdictional customer, the California-Pacific Utilities Company, and upon the Public Service Commission of Nevada and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 22, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32955 Filed 11-8-76; 8:45 am]

[Docket No. RP76-115]

NORTHWEST PIPELINE CORP.

Extension of Procedural Dates

NOVEMBER 1, 1976.

On October 22, 1976, Staff Counsel filed a motion to extend the date, fixed by order issued July 30, 1976, for service of Staff Top Sheets in the above-designated proceeding.

Upon consideration, notice is hereby given that an extension of time is granted to and including December 1, 1976, within which Staff shall serve Top Sheets on all parties in the above-designated proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32945 Filed 11-8-76; 8:45 am]

[Docket No. CP77-20]

PANHANDLE EASTERN PIPE LINE CO.

Application

NOVEMBER 2, 1976.

Take notice that on October 19, 1976, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP77-20 an application pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Hayes-Albion Corporation (Hayes-Albion), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Hayes-Albion for 2 years on a firm basis up to 1,432 Mcf of gas per day and 308,700 Mcf annually with redelivery to Columbia Gas Transmission Corporation (Columbia) for the account of Hayes-Albion. It is stated that Hayes-Albion, a direct industrial customer of Applicant, has made arrangements to purchase for high priority use certain gas supplies which are unavailable to the interstate market from Shell Oil Company (Shell) and Amoco Production Company (Amoco) from wells located in Eaton County, Michigan.¹ It is stated that Hayes-Albion has completed construction of a 31-mile pipeline from Eaton County wells to its Albion, Michigan, plant and proposes to have Panhandle deliver by displacement a portion of the Eaton County gas to Columbia for Hayes-Albion's account at its Tiffin plant in northwestern Ohio.

It is stated that the Eaton County gas would be delivered to Applicant for redelivery to Hayes-Albion's Tiffin, Ohio, plant through an arrangement whereby Applicant will decrease its deliveries for the account of the Albion, Michigan, plant at the existing point of interconnection of facilities of Southeastern Michigan Gas Company and Applicant in Calhoun County, Michigan. Applicant would then deliver on a firm basis an equivalent of such volumes to Columbia for the account of Hayes-Albion's Tiffin, Ohio, plant at the existing points of delivery from Applicant to Columbia in Lucas County, Ohio, for further delivery through existing facilities of Columbia.

It is stated that Hayes-Albion would pay to Applicant a transportation charge of \$1,031 per month, such charge being subject to increase or decrease by an

¹It is indicated in Columbia's related pending application filed in Docket No. CP77-9 that Hayes-Albion would pay Shell and Amoco \$1.60 per Mcf until April 1, 1977; \$1.80 per Mcf from April 1, 1977, to April 1, 1978; and \$2.00 per Mcf from April 1, 1978 to April 1, 1979.

amount equal to 2.38¢ per Mcf that Applicant transports in excess of the firm volumes on any day or fails or is unable to take on any day.

Applicant states that it is presently experiencing substantial curtailment on its system and anticipates curtailment to continue throughout the term of the transportation agreement with Hayes-Albion. It is further stated that the aforementioned facts aptly indicate Applicant's facilities are adequate to handle the volumes to be transported for Hayes-Albion.

It is asserted that Hayes-Albion operates two large modern metal casting plants, one at Albion, in southern Michigan and one at Tiffin, in northwestern Ohio. It is stated that both casting plants supply castings to major manufacturers of automobile components and subsystems whose products are purchased by automobile manufacturers. It is further asserted that Hayes-Albion's Tiffin, Ohio, plant is the second largest producer of brake drum castings in the United States, employing approximately 500 persons with a total payroll of \$5.8 million.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32958 Filed 11-8-76; 8:45 am]

[Docket No. RP71-119; RP74-31-22]

**PANHANDLE EASTERN PIPE LINE CO.;
(HERCULES INC. AND MISSOURI EDISON CO.)****Order Granting Rehearing for Purpose of
Further Consideration**

OCTOBER 29, 1976.

On October 1, 1976, Hercules Incorporated (Hercules), pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure, filed an application for rehearing of the Commission's September 3, 1976 order in the above-entitled proceeding. In that order, the Commission dismissed Hercules' request for permanent extraordinary relief and ordered payback of all volumes received under its grant of temporary relief.

In order to afford further time for consideration of the arguments presented by Hercules, we find it is appropriate and proper in the administration of the Natural Gas Act to grant rehearing for the purpose of further consideration.

The Commission orders: Rehearing for the purpose of further consideration is hereby granted.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32952 Filed 11-8-76; 8:45 am]

[Docket Nos. E-7795 and E-7989]

PHILADELPHIA ELECTRIC CO.**Extension of Time**

NOVEMBER 2, 1976.

On October 27, 1976, Philadelphia Electric Company filed a motion to extend the date fixed by order issued September 30, 1976, for filing Briefs Opposing Exceptions to the Initial Decision in the above-designated proceeding.

Upon consideration, notice is hereby given that an extension of time is granted to and including November 15, 1976, within which parties shall file Briefs Opposing Exceptions to the Initial Decision in this proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32946 Filed 11-8-76; 8:45 am]

[Docket Nos. RP74-6 and RP72-74]

SOUTHERN NATURAL GAS CO.**Order Accepting Tariff Sheets for Filing and
Suspending Tariff Sheets**

OCTOBER 29, 1976.

On October 1, 1976, Southern Natural Gas Company (Southern) tendered for filing a proposed modification in its FPC Gas Tariff Volume No. 1. Said modification provides that during the period November 1, 1976, through March 31, 1977, the penalty provisions applicable to gas taken in excess of curtailment orders shall not be applicable to a Purchaser which certifies that on the day in question (a) it did not authorize consumers to take gas other than consumers in pri-

ority-of-service categories 1, 2, and 3; (b) gas from other sources was utilized to the extent feasible; and (c) gas purchases did not exceed Contract Demand or Maximum Delivery Obligation.

On October 15, 1976, Carolina Pipeline Company (Carolina) filed a petition for leave to intervene coupled with a motion to reject the tariff filing or in the alternative for a formal hearing. Carolina states that all previous changes in the Index of Requirements were filed by Southern only after review and recommendation by the Audit Committee, whereas the change proposed herein has not been submitted to the Audit Committee. Carolina requests that the Commission either reject Southern's tariff filing or suspend the filing for five months and set the matter for formal hearing. Other protests have been filed by South Carolina Electric and Gas Company, The South Carolina Public Service Commission and Mississippi Valley Gas Company.

It is appropriate to grant the alternative motion of Carolina and suspend the filing for five months unless otherwise ordered by the Commission.

The Commission finds: (1) The proposed tariff sheets tendered by Southern in Docket Nos. RP74-6 and RP72-74 on October 1, 1976, should be accepted for filing.

(2) Good cause exists to suspend the proposed tariff sheets tendered by Southern in Docket Nos. RP74-6 and RP72-74 for five months, until March 31, 1977, as hereinafter ordered, unless otherwise ordered by the Commission.

The Commission orders: (A) The tariff sheets tendered by Southern in Docket Nos. RP74-6 and RP72-74 are herein accepted for filing.

(B) The tariff sheets tendered by Southern in Docket Nos. RP74-6 and RP72-74 are herein suspended for five months until March 31, 1977, unless otherwise ordered by the Commission.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32951 Filed 11-8-76; 8:45 am]

[Docket No. RP72-121 (PGA76-7a)]

SOUTHWEST GAS CORP.**Filing of Revised Tariff Sheet**

NOVEMBER 2, 1976.

Take notice that on October 18, 1976, Southwest Gas Corporation (Southwest) tendered for filing amended Eighteenth Revised Sheet No. 3A, constituting Original PGA-1, and Schedule 1 to be substituted for Eighteenth Revised Sheet No. 3A and supporting schedule of the filing submitted by letter dated September 23, 1976.

The company states that the reason for this filing is to replace Eighteenth Revised Sheet No. 3A to reflect a decrease in rates of .005 cents per therm due to the filing by Northwest Pipeline Corporation to reduce the SGS-1 commodity charge.

Southwest requests the Commission permit the reduction noted herein and to allow the enclosed amended tariff sheet to become effective on October 27, 1976, concurrently with Northwest Pipeline Corporation's rate change.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before November 16, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32959 Filed 11-8-76; 8:45 am]

[Docket No. CP77-21]

**TENNESSEE GAS PIPELINE CO. AND
COLUMBIA GULF TRANSMISSION CO.****Application**

NOVEMBER 2, 1976.

Take notice that on October 19, 1976, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and Columbia Gulf Transmission Company (Columbia Gulf) (Applicants) filed on application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) Applicants to construct and operate the following facilities in the South Timbalier Area, Offshore Louisiana, and Lafourche Parish, Louisiana, to facilitate the attachment, transportation and delivery onshore of natural gas volumes to be produced from the South Timbalier Block 37 Field Area (Blocks 36-37): (a) 5.7 miles of 12-inch high pressure pipeline between the existing producer "B" platform in Block 36 and the existing producer "A" platform in Block 37 and between the "A" platform and a soon-to-be installed "C" platform in Block 37; (b) 32.4 miles of 24-inch high pressure pipeline extending from the producer "A" platform in Block 37 (1) to the existing Gulf-operated separation facility located on East Timbalier Island (ET Island); and then (2) northward to an interconnection with Columbia Gulf's existing 24-inch pipeline in Lafourche Parish, Louisiana; (c) measurement facilities on each of the three aforementioned producer platforms; (d) measurement facilities at the northern terminus of the proposed 24-inch pipeline where deliveries will be made to Columbia Gulf (Lafourche Delivery Point); (e) low pressure measurement facilities, dehydration facilities and four (4) 1,100 horsepower compressor units at the separation facility on ET Island.

(2) Applicant Tennessee to transport through its share of capacity in the above facilities, for delivery onshore to Texas Eastern Transmission Corporation (Texas Eastern), natural gas volumes for Gulf Oil Corporation (Gulf) produced by Gulf from its interest in Blocks 36-37;

(3) Applicants to construct and operate an additional measurement station and related facilities at the interconnection of Tennessee's South Louisiana 500 Line with Columbia Gulf's East Lateral near Avery Island in Iberia Parish, Louisiana (Avery Island Delivery Point);

(4) Applicants to exchange natural gas volumes at the aforementioned Lafourche and Avery Island Delivery Points and at the Cocodrie Delivery Point at the terminus of the East Leg of Applicants' Blue Water Project (BWP) in Terrebonne Parish, Louisiana.

Applicants indicate that the proposed facilities will enable them to attach substantial volumes of gas supplies committed to them by Mobil Oil Corporation (Mobil) and Tenneco Oil Company (TOC) in Block 36-37. Applicants further state that Southern Natural Gas Company (Southern) is negotiating with Texaco Inc (Texaco) for a commitment of Texaco's interest in Blocks 36-37, and that upon Southern's securing such commitment, Applicants will amend their request for certificate authorization to reflect Southern as a joint applicant. Applicants state that the volumes of gas to be transported onshore by Tennessee for Gulf will be sold by Gulf to Texas Eastern pursuant to existing certificate authorization issued to Gulf on Docket No. CI64-26.

Applicants anticipate that a total of approximately 315 Bcf of proven and probable-potential gas reserves underlie Blocks 36-37, of which approximately 184 Bcf is regarded as proven. Applicants anticipate that some 170,000 Mcf per day of gas will be available from such reserves by 1980 from 106 wells expected to have been completed by then. Of such total volume, 42.5 MMcf/d is expected to be available to Tennessee, 28.3 MMcf/d to Columbia Gulf, 42.5 MMcf/d to Southern and 56.7 MMcf/d to Texas Eastern. Applicants state that the deliverability from the Blocks 36-37 reserves will help moderate curtailment levels on their systems and the systems of Southern and Texas Eastern.

Applicants estimate the total direct cost of the proposed facilities to be \$23,906,300.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to

make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32961 Filed 11-8-76;8:45 am]

[Docket No. RP71-41 (Remand)]

UNITED GAS PIPE LINE CO.

Extension of Time

NOVEMBER 1, 1976.

On October 28, 1976, Commission Staff filed a motion to extend the date for filing Briefs on Exceptions to the Initial Decision issued October 15, 1976, in the above-designated proceeding. The motion states that parties to the proceeding have been contacted and have no objection.

Upon consideration, notice is hereby given that the date for filing Briefs on Exceptions is extended to and including December 15, 1976, and the date for filing Briefs Opposing Exceptions is extended to and including January 4, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-32950 Filed 11-8-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

MEDICAL DEVICE CLASSIFICATION PANELS

Request for Nonvoting Representatives of Consumer and Industry Interests

The Food and Drug Administration requests nominations for nonvoting representatives of consumer and industry interests to serve on two recently organized classification subcommittees of the Ear, Nose, and Throat Device Classification Panel; namely, the Surgical Instruments and Diagnostic and Therapeutic Devices Subcommittee, and the Implants and Biomaterials Subcommittee.

The function of these two subcommittees is to review and evaluate available data concerning the safety and effectiveness of the devices under their respective purview and to make recommendations concerning classification of such devices to the Commissioner of Food and Drugs, pursuant to the provisions prescribed under section 513 of the Federal Food, Drug, and Cosmetic Act (90 Stat. 540-546 (21 U.S.C. 360c)) as amended by the Medical Device Amendments of 1976.

A notice published in the FEDERAL REGISTER of May 12, 1976 (41 FR 19363) requested the submission of nominations of individuals to serve on the Surgical Instruments, Implants, and Biomaterials Subcommittee of the Ear, Nose, and Throat Device Classification Panel. Recently, the Panel decided to divide that subcommittee into the two new subcommittees, for which nominations are solicited by this notice.

Section 513 of the act provides that each such panel shall include as nonvoting members, one representative of consumer interests and one representative of interests of the device manufacturing industry. The Commissioner has decided that each of the two subcommittees identified in this notice shall also have a representative of consumer interests and a representative of industry interests.

Any interested person may nominate one or more qualified persons to serve as a nonvoting consumer representative for the subcommittees. The nominations must state that the person nominated is aware of the nomination, is willing to serve as a member of the subcommittee, and appears to have no conflict of interest that would preclude committee membership. A complete curriculum vitae is also required for each nomination.

All nominations for consumer representatives must be submitted in writing to the Director, Office of Consumer Programs (HFG-1), Office of Professional and Consumer Programs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852. Nominations must be received no later than on or before January 10, 1977. After the time for receipt of nominations has expired, the curriculum vitae for each of the nominees will be sent to interested consumer organizations and to any other person submitting a nomination, together with a ballot that must be filled out and returned to the Office of Professional and Consumer Programs at the address given above within 30 days. The selection of the consumer representatives will be determined from the ballots submitted.

Nominations for industry representatives must be submitted no later than on or before January 10, 1977, by any interested industry organization. Nominations must be sent to Dr. Robert S. Kennedy, Bureau of Medical Devices and Diagnostic Products (HFK-1), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910. The nomination must include a curriculum vitae for the individual and an indication that he or she is aware of the nomination and is

willing to serve if elected. After the time for receiving nominations has expired, a letter shall be sent to each organization that has made a nomination, attaching a complete list of all such organizations and the nominees, stating that it is the responsibility of each organization to consult with the others in selecting a single nonvoting member representing industry interests for that particular committee within 30 days after receipt of the letter.

Dated: November 2, 1976.

JOSEPH P. HILE,
Associate Commissioner for
Compliance.

[FR Doc. 76-32719 Filed 11-8-76; 8:45 am]

[Docket No. 76N-0404; DESI 6188]

PROPYLTHIOURACIL FOR ORAL USE

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

In a notice published in the *FEDERAL REGISTER* of March 19, 1969 (34 FR 5392), the Food and Drug Administration announced its conclusions that the drug products described below are (1) effective for the treatment of hyperthyroidism and to ameliorate hyperthyroidism in preparation for subtotal thyroidectomy or radioactive iodine therapy, and (2) possibly effective for thyroditis. No person has submitted any data in support of the possibly effective indication, and it is now reclassified to lacking substantial evidence of effectiveness. This notice offers an opportunity for a hearing concerning that indication and sets forth the conditions for marketing the drugs for the indications for which they continue to be regarded as effective. Persons who wish to request a hearing may do so on or before December 9, 1976.

1. NDA 6-188; Propylthiouracil Tablets, 50 mg; Lederle Laboratories, Division American Cyanamid Co., P.O. Box 500, Pearl River, NY 10965.

2. NDA 6-212; Propylthiouracil Tablets, 50 mg; Abbott Laboratories, Abbott Park, 14th & Sheridan Rd., North Chicago, IL 60064.

3. NDA 6-213; Propylthiouracil Tablets, 50 mg; Eli Lilly & Co., Box 618, Indianapolis, IN 46206.

4. NDA 6-250; Propylthiouracil tablets, 50 mg; The Upjohn Co., 7171 Portage Rd., Kalamazoo, MI 49002.

5. NDA 6-286; Propylthiouracil tablets, 50 mg; Parke, Davis & Co., GPO Box 118, Detroit, MI 48232.

6. NDA 6-416; Propylthiouracil tablets, 50 mg; Ciba Pharmaceutical Co., Division of Ciba-Geigy Corp., 556 Morris Ave., Summit, NJ 07901.

7. NDA 6-846; Propylthiouracil tablets, 50 mg; Rexall Drug Co., P.O. Box 7189, St. Louis, MO 63115.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such

drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance (HFD-310), 5600 Fishers Lane, Rockville, MD 20852.

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drugs are effective for the indications listed in the labeling conditions below. The drugs now lack substantial evidence of effectiveness for the indication evaluated as possibly effective in the March 19, 1969 notice.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* Propylthiouracil preparations are in tablet form suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows: Hyperthyroidism.

To ameliorate hyperthyroidism in preparation for subtotal thyroidectomy or radioactive iodine therapy.

3. *Marketing status of approved products.* Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that the holder of the application submits the following if he has not previously done so:

a. On or before January 10, 1977, (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

b. On or before June 15, 1977, data to show that the drug is biologically available in the formulation marketed.

4. *Marketing status of all other products.* a. Approval of an abbreviated new drug application must be obtained prior to marketing such product. The application shall contain the information specified in 21 CFR 314.1(f) and shall include data of the kind required for this drug at the time of submission of the application to show that it is biologically available in the formulation proposed for marketing.

b. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111 (a)(5), demonstrating the effectiveness of the drug(s) for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice.

Notice is given to the holder(s) of the new drug application(s), and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) and all amendments and supplements thereto providing for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application(s) supplemented, in accord with this notice, to delete the claim(s) lacking substantial evidence of effectiveness.

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201

(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application(s) providing for the claim(s) involved should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products.

If an applicant or any person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before December 9, 1976, a written notice of appearance and request for hearing, and (2) on or before January 10, 1977, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of such drug product. Any such drug product labeled for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the

required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice of opportunity for hearing shall be filed in quintuplicate. Such submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk (address given below) during working hours, Monday through Friday.

Communications forwarded in response to this notice should be identified with the reference under DESI 6188, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

Supplements (Identify with NDA number): Division of Metabolism and Endocrine Drug Products (HFD-130), Rm. 14B-03, Bureau of Drugs.

Original abbreviated new drug applications (Identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Request for Hearing (Identify with Docket number appearing in the heading of this notice): Hearing Clerk, Food and Drug Administration (HFC-20), Rm. 4-65.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFC-18), Rm. 4-62.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

(Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.31) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).)

Dated: October 29, 1976.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 76-32830 Filed 11-8-76; 8:45 am]

Office of Education

NATIONAL ADVISORY COUNCIL ON EXTENSION AND CONTINUING EDUCATION

Public Meeting

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, that a meeting of the Federal Programs Evaluation Committee of the National Advisory Council on Extension and Continuing Education will be held on Tuesday, November 23, 1976, from 10:30 a.m. to 1 p.m., in the Council's office at 425 Thirteenth Street, NW., Suite 529, Washington, D.C.

The National Advisory Council on Extension and Continuing Education is authorized under Pub. L. 89-329. The Council is directed to advise the Commissioner of Education in the preparation of general regulations and with respect to policy matters arising in the administration of Title I, and to report annually to the President on the administration and effectiveness of all federally supported extension and continuing education programs, including community service programs.

The meeting of the Federal Programs Evaluation Committee will be open to the public, but because of the limited space available in the Council office, anyone wishing to attend the meeting should inform the Council's staff office (376-8888) no later than Thursday, November 18. The purpose of the meeting is to review and revise the Committee's compilation of Federal programs which provide program support for extension and continuing education activities, and to prepare the compilation for publication by the Government Printing Office.

All records of Council proceedings are available for public inspection at the Council office located at 425 Thirteenth Street NW, Suite 529, Washington, D.C.

Dated: November 1, 1976.

JAMES A. TURMAN,
Executive Director.

[FR Doc. 76-32816 Filed 11-8-76; 8:45 am]

Public Health Service

HEALTH RESOURCES ADMINISTRATION

Application Announcement for Grants To Assist Health Professions Schools Which are in Financial Distress

The Bureau of Health Manpower, Health Resources Administration, announces that applications for fiscal year 1977 Grants to Assist Health Professions Schools which are in Financial Distress are now being accepted under authority of section 773 of the Public Health Service Act, as extended by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484).

Section 773 of the Act provides that the Secretary of Health, Education, and Welfare may make grants to assist any school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, or podiatry, which is in serious financial straits to meet its costs of operation or which has special need for financial assistance to meet accreditation requirements.

Applicants may request application materials by contacting immediately the Regional Health Administrator of the appropriate DHEW Regional Office (addresses indicated below).

To be considered for fiscal year 1977 funding, completed applications for grants for Health Professions Schools in Financial Distress must be submitted to the appropriate DHEW Regional Office no later than December 1, 1977.

DHEW regional offices

Regional Health Administrator, DHEW Region I—PHS, J. F. Kennedy Federal Bldg., Government Center, Boston, Mass. 02203.

Regional Health Administrator, DHEW Region II—PHS, Federal Bldg., 26 Federal Plaza, New York, N.Y. 10007.

Regional Health Administrator, DHEW Region III—PHS, P.O. Box 13716, Philadelphia, Pa. 19101.

Regional Health Administrator, DHEW Region IV—PHS, Peachtree-7th Bldg., 50 7th St. NE., Atlanta, Ga. 30323.

Regional Health Administrator, DHEW Region V—PHS, 300 South Wacker Dr., Chicago, Ill. 60606.

Regional Health Administrator, DHEW Region VI—PHS, 1200 Main Tower Bldg., Dallas, Tex. 75202.

Regional Health Administrator, DHEW Region VII—PHS, Federal Office Bldg., 601 East 12th St., Kansas City, Mo. 64106.

Regional Health Administrator, DHEW Region VIII—PHS, Federal Office Bldg., 19th and Stout Sts., Denver, Colo. 80202.

Regional Health Administrator, DHEW Region IX—PHS, 50 Fulton St., San Francisco, Calif. 94102.

Regional Health Administrator, DHEW Region X—PHS, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, Wash. 98101.

Dated: October 28, 1976.

States within regions

Connecticut, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts.

New Jersey, New York, Puerto Rico, Virgin Islands.

Delaware, Maryland, Virginia, West Virginia, Pennsylvania, District of Columbia.

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Illinois, Indiana, Michigan, Ohio, Wisconsin, Minnesota.

Arkansas, Louisiana, New Mexico, Texas, Oklahoma.

Iowa, Missouri, Kansas, Nebraska.

Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Arizona, California, Hawaii, Nevada, Guam, American Samoa, Trust Territory of the Pacific Islands.

Alaska, Idaho, Oregon, Washington.

JAMES A. WALSH,
*Acting Administrator, Health
Resources Administration.*

[FR Doc. 76-32747 Filed 11-8-76; 8:45 am]

**Rehabilitation Services Administration
ALLOTMENT PERCENTAGES FOR PURPOSES OF VOCATIONAL REHABILITATION SERVICES**

**Promulgation
Correction**

In FR Doc. 76-31415 appearing at page 47092 in the FEDERAL REGISTER of Wednesday, October 27, 1976 the following correction should be made.

In the middle column, first column of the table, the figures for Nevada should read "43.58".

**Office of the Secretary
PRESIDENT'S COMMITTEE ON MENTAL RETARDATION
Meeting**

The President's Committee on Mental Retardation was established by Executive Order to provide advice and assistance in the area of mental retardation to the President including evaluation of the adequacy of the national effort to combat mental retardation; coordination of activities of Federal agencies; provision of adequate liaison between Federal activities and related activities of State and local governments, foundations and other private organizations; and development of information designed for dissemination to the general public.

The Committee will meet on Thursday, December 9, 1976, 9:00 a.m. to 5:00 p.m. and on Friday, December 10, 1976, 9:00 a.m. to 5:00 p.m., in the Carlyle I Room of the Old Town Holiday Inn, 480 King

Street, Alexandria, Virginia 22314. At the meeting, the Committee will discuss full citizenship rights, humane service systems, trends in residential facilities, public awareness, and prevention of mental retardation.

These meetings are open to the public. Further information on the President's Committee on Mental Retardation may be obtained from Mr. Fred J. Krause, Executive Director, President's Committee on Mental Retardation, Room 2614, ROB #3, 7th & D Streets, S.W., Washington, D.C. 20201, telephone: Area Code 202-245-7634.

Dated: November 1, 1976.

FRED J. KRAUSE,
*Executive Director, President's
Committee on Mental Retardation.*

[FR Doc. 76-32883 Filed 11-8-76; 8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing, Federal Housing Commissioner

[Docket No. N-76-658]

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM DEMONSTRATION REHABILITATION PROGRAM

Notice is hereby given that the Department of Housing and Urban Development will make available a bonus allocation of \$50 million in Section 8 contract authority to selected localities for a Demonstration Program to test the effect of special labor-management

agreements incorporating differential terms and conditions and wage rates for substantial rehabilitation projects. Fifteen million dollars of the total will be made available for projects to be financed through State Housing Finance and Development Agencies (HFDAs).

The Demonstration Program is intended to stimulate additional substantial rehabilitation, reduce the cost of rehabilitation, and contribute to the revitalization of existing neighborhoods. Applications for participation in the Demonstration Program should be prepared by units of general local government in accordance with Section 881.403 of the regulations published on the same date as this Notice elsewhere in this issue (FR Doc. 76-32993).

Five copies of each application must be received no later than 5 p.m. on November 30, 1976, by the Deputy Assistant Secretary for Assisted Housing, Department of Housing and Urban Development, Room 6230, 451 7th Street, S.W., Washington, D.C. 20410. In addition, one copy of the application must be submitted to the HUD Field Office with jurisdiction over the applicant locality. Selection of applicants will be completed by December 10, 1976.

HUD Field Offices with jurisdiction over the selected localities will advertise by December 15, 1976 for developers wishing to be pre-qualified for participation in the program, and developers will be pre-qualified in accordance with Section 881.406.

The special labor-management agreement applicable to a selected locality must be executed by January 10, 1977 or approval of the application may be withdrawn.

If any Section 8 contract authority remains unexpended after the approval of proposals in the selected localities, or if approval of an application is withdrawn in accordance with the above paragraph, the Department will publish a subsequent Notice in the FEDERAL REGISTER to invite additional applications from localities interested in utilizing the remaining contract authority being made available for this program.

Because the program is for demonstration purposes, an evaluation by the Office of Policy Development and Research will take place concurrently with implementation.

JAMES L. YOUNG,
*Assistant Secretary for Housing,
Federal Housing Commissioner.*

[FR Doc. 76-32992 Filed 11-8-76; 8:45 am]

**Office of the Secretary
[Docket No. D-76-467]**

**ACTING DEPUTY GENERAL MANAGER,
NEW COMMUNITY DEVELOPMENT CORPORATION AND ACTING ADMINISTRATOR, NEW COMMUNITIES ADMINISTRATION**

Designation

Section A. Designation. Each of the officials listed in Items (1)-(4) below is designated to serve as Deputy General

Manager, New Community Development Corporation or Administrator, New Communities Administration or in both such positions, in the case of absence or vacancy in such positions. The named officials shall serve in the order set forth.

(1) Deputy Administrator for Operations and Finance.

(2) Deputy Administrator for Project Support and Development.

(3) Deputy Administrator for Program Policy and Management.

(4) Assistant Deputy Administrator for Program Policy and Management.

Sec. B. Functions. The official serving in an acting capacity under this designation shall have all the powers, functions and duties assigned to such position.

Sec. C. Effective Date. This designation is effective as of August 4, 1976.

Sec. D. Supersession. The designation dated July 15, 1975 (40 F.R. 42770) for the Assistant Administrator, New Communities Administration, First Assistant to the General Manager, New Community Development Corporation is hereby revoked.

CARLA A. HILLS,
Secretary of Housing
and Urban Development.

[FR Doc.76-32874 Filed 11-8-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 3930]

CALIFORNIA

Airport Lease

NOVEMBER 1, 1976.

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-214) Moore Aviation, Inc., a California Corporation, has applied for an airport lease for the following land:

MOUNT DIABLO BASE AND MERIDIAN

T. 25 S., R. 20 E.,
Sec. 33, NW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$.

The purpose of this notice is to inform the public that the filing of this application segregates the described land from all other forms of use or disposal under the public land laws.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 800 Truxton Avenue, Room 311, Bakersfield, California 93301.

WALTER F. HOLMES,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc.76-32811 Filed 11-8-76;8:45 am]

[NM 29065]

NEW MEXICO

Application

NOVEMBER 1, 1976.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by

the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 20 S., R. 30 E.,
Sec. 31, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 33, S $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 34, S $\frac{1}{2}$ SW $\frac{1}{4}$.

This pipeline will convey natural gas across 2.047 miles of national resource land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,
Chief Branch of Lands and
Minerals Operations.

[FR Doc.76-32895 Filed 11-8-76;8:45 am]

WYOMING STATE MULTIPLE USE ADVISORY BOARD

Meeting

NOVEMBER 2, 1976.

Notice is hereby given that the Wyoming State Multiple Use Advisory Board will meet at 8:15 a.m. December 20, 1976, at the Little America Motel, American Room, Cheyenne, Wyoming.

The agenda will include discussion and interpretation of the Organic Act; regional coal environmental impact statements status; and grazing regulations.

The meeting will be open to the public. Oral or written statements may be submitted for the Board's consideration at 2:00 p.m. December 20, 1976. Such statements should be limited to matters set forth in the agenda. Those wishing to make an oral statement must inform the State Director (912), Bureau of Land Management, Box 1828, Cheyenne, Wyoming 82001, in writing by close of business December 13, 1976. Time limits for oral presentations may be established by the Chairman to ensure that all may be heard within the time available for such statements. Any interested person or organization may file a written statement with the Board for its consideration. Such statements may be submitted at the meeting or mailed to the State Director (912), Bureau of Land Management, Box 1828, Cheyenne, Wyoming 82001.

Further information concerning the meeting may be obtained from Mr. James L. MacNair, Chief, Office of Public Affairs, Bureau of Land Management, Box 1828, Cheyenne, Wyoming 82001. His telephone number is (307) 778-2220, ext. 2384.

DANIEL P. BAKER,
State Director.

[FR Doc.76-32897 Filed 11-8-76;8:45 am]

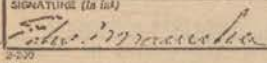
Fish and Wildlife Service
ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to

have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Cincinnati Zoo, 3400 Vine Street, Cincinnati, Ohio 45220; Edward J. Maruska, Director; Robert R. Lotshaw, General Curator.

DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION		1. APPLICATION FOR (Indicate only one)													
		☒ IMPORT OR EXPORT LICENSE ☐ PERMIT													
		2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED: We would like to export 3 pairs Rothschild's Starling, Leucopsar rothschildi, endangered species, to the Assiniboine Park Zoo in Winnipeg, Canada for the purpose of captive propagation. These birds will be sent on breeding loan.													
3. APPLICANT (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested) Cincinnati Zoo 3400 Vine Street Cincinnati, Ohio U.S.A. 45220 Phone: 513-281-4700		5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING: EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION Public zoo - Wildlife exhibition, research programs in addition to educational and related activities.													
4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING: <table border="1"> <tr> <td>☐ MR. ☐ MRS. ☐ MISS ☐ M.</td> <td>HEIGHT</td> <td>WEIGHT</td> </tr> <tr> <td>DATE OF BIRTH</td> <td>COLOR HAIR</td> <td>COLOR EYES</td> </tr> <tr> <td>PHONE NUMBER WHERE EMPLOYED</td> <td colspan="2">SOCIAL SECURITY NUMBER</td> </tr> <tr> <td colspan="3">OCCUPATION</td> </tr> </table>		☐ MR. ☐ MRS. ☐ MISS ☐ M.	HEIGHT	WEIGHT	DATE OF BIRTH	COLOR HAIR	COLOR EYES	PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER		OCCUPATION			NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC. Edward J. Maruska, Director and Robert R. Lotshaw, Gen. Curator 513-281-4700 IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED Ohio	
☐ MR. ☐ MRS. ☐ MISS ☐ M.	HEIGHT	WEIGHT													
DATE OF BIRTH	COLOR HAIR	COLOR EYES													
PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER														
OCCUPATION															
6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED		7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO (If yes, list license or permit number) End. Species Permit No. ES-85 End. Species Permit No. ES-105													
8. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF not required		9. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSED? ☐ YES ☒ NO (If yes, list jurisdictions and type of documents) Animals are captive born													
10. DESIRED EFFECTIVE DATE ASAP		11. DURATION NEEDED until terminated													
12. ATTACHMENTS: THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.124) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.															
CERTIFICATION I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER D OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.															
SIGNATURE (In ink) 		DATE 22 September 1976													

ZOOLOGICAL SOCIETY OF CINCINNATI,
September 22, 1976.

DIRECTOR (FWS/LE),
U.S. Fish and Wildlife Service,
U.S. Department of the Interior,
P.O. Box 19183,
Washington, D.C.

DEAR SIR: The Cincinnati Zoological Gardens requests an Endangered Species Permit to export three male and three female Rothschild's Starlings, Leucopsar rothschildi.

1. Common and scientific names of the species or subspecies, number, age and sex of the wildlife to be covered in the permit.

The Cincinnati Zoo has a surplus of Rothschild's Starlings, Leucopsar rothschildi. We

started with a pair purchased in 1970. Our recent inventory as of 22 August 1976 is a count of twenty-six (26) birds in the collection. We propose to send three pairs to Clive Roots, zoo director, Assiniboine Park Zoo in Winnipeg, Canada, on breeding loan. There will be no cash exchanged in this transaction.

2. Copy of the contract or other agreement under which such wildlife is to be imported, showing the country of origin, name and address of the seller or consignor, date of the contract, number and weight (if available), and description of the wildlife.

Attached are photocopies of letters from Mr. Clive G. Roots, zoo director.

3. A full statement of justification for the permit including details of the project or other plans for utilization of the wildlife in relation to zoological, educational, scientific, or propagational purposes as appropriate and the planned disposition of the wildlife upon termination of the project.

The Cincinnati Zoo has had excellent success in the propagation of this species, and we have sent a number of these birds on breeding loan to other zoos within the United States. We understand there are excellent breeding groups within the United States and we feel that by establishing this species in another country we would further enhance their survival. Mr. Roots has an excellent reputation as an aviculturist and has professed a desire to work with this species. (His résumé is attached to this application)

4. A description and the address of the institution or other facility where the wildlife will be used or maintained.

The Rothschild's Starlings, Leucopsar rothschildi, will be held at the Assiniboine Park Zoo which has an excellent reputation as one of the leading zoological gardens in Canada. Mr. Clive G. Roots is the director. This Park is owned and operated by the City of Winnipeg and financed by the Province of Manitoba as a non-profit, public facility. There is no admission charge to the zoo and the attendance averages 1.5 million visitors annually. The postal address is: The City of Winnipeg, Parks and Protection Department, Assiniboine Park Zoo, 2855 Corydon Avenue, Winnipeg, Manitoba R3P 0R5.

5. A statement that at the time of application the wildlife to be imported is still in the wild, was born in captivity or has been removed from the wild.

The six Rothschild's Starlings were hatched at the Cincinnati Zoo. One male, banded 7-82 right leg was hatched in 1974; one male banded 6-50 right leg was hatched in 1975; one male banded 7-80, hatched in 1971; one female banded 7-79 hatched 1971; one female banded 6-51 left leg hatched in 1975; one female banded 6-52 left leg hatched in 1975.

6. A résumé of the applicant's attempts to obtain the wildlife to be imported from sources which would not cause the death or removal of additional animals from the wild.

All the birds in this transaction were hatched in captivity, thus there will be no drain on the natural population.

(v) For the five years preceding the date of this application provide a detailed description of all mortalities involving the species covered in the application and held by the applicant, if any (or any other wildlife of the same genus or family held by the applicant), including the causes of such mortalities and the steps taken to avoid or decrease such mortalities.

To our knowledge the Assiniboine Park Zoo has never exhibited the Rothschild's Mynah. There have been no mortalities of other species belonging to the same family for a period of five years preceding the date of this application.

7. (1) A complete description, including photographs or diagrams, of the area and facilities in which the wildlife will be housed.

The Rothschild's Mynahs would be housed in a building known as the Tropical House (photographs enclosed). This is a controlled environment building of approximately 12,000 sq. ft. by 35 ft. high which is landscaped and tropically planted. The vegetation is established and is as profuse as any conservatory. The terrain is contoured and contains

several pools, a waterfall and rock walls. The temperature, humidity and lighting are controlled with the most sophisticated equipment available. The building contains a varied collection of compatible, non-destructive soft-billed birds in free flight and reproduction has been excellent.

(ii) A brief resume of the technical expertise available, including any experience the applicant or his personnel have had in propagating the species or closely related species to be imported.

Copies of the curriculum vitae of the zoo director, supervisor and foreman are enclosed.

The director and staff of the Assiniboine Park Zoo have successfully bred the following birds during their zoo careers. These species belong to the same family or closely related families of soft-billed birds. Many of these species are generally considered difficult to breed in captivity and many are first world captive breedings.

Rothschild's Starling
Andaman Starling
Black-collared Starling
Spreo Starling
Wattled Starling
Southern Tree Pie
Blue Whistling Thrush
Abyssinian Ground Thrush
Little Bee-eater
Yellow-rumped Tanager
Blue-crowned Motmot
Thailand Hoopoe
Green Wood Hoopoe
Fairy Bluebird
Black-spotted Barbet
Brown-throated Barbet
Yellow-breasted Fruit Pigeon
Bleeding Heart Pigeon
Common Crowned Pigeon
Von der Decken's Hornbill
Red-billed Hornbill

8. The planned disposition of such wildlife upon termination of the activities sought to be authorized.

The Manitoba Museum of Man and Nature received all suitable carcasses after thorough post mortem examination at the Provincial Pathology Laboratory. After preparation such carcasses or 'parts thereof' are made available to the University of Manitoba, the University of Winnipeg and other interested institutions of higher learning.

I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I, Title 50, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief, I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001.

Sincerely,

EDWARD J. MARUSKA,
Director.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street, NW, Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. This application has been assigned File Num-

ber PRT 2-127-07; please refer to this number when submitting comments. All relevant comments received on or before December 9, 1976.

Dated: November 2, 1976.

LOREN K. PARCHER,
Acting Chief, Division of Law
Enforcement U.S. Fish and
Wildlife Service.

[FR Doc.76-32887 Filed 11-8-76;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: National Museum of Natural History, Division of Birds, Smithsonian Institution, Washington, D.C. 20560; Dr. Storrs L. Olson, Curator.

DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE		FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION													
		1. IMPORT OR EXPORT LICENSE ☐ PERMIT ☒													
2. APPLICANT (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested) Dr. Storrs L. Olson, Curator Division of Birds Smithsonian Institution Washington, D.C. 20560		3. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED: Take and import 4 Puerto-Rican Whip-poor-wills and 2 Yellow-shouldered Blackbirds for skeletal specimens for Nat. Mus. of Nat. Hist. Needed for study and identification of fossil material from Puerto Rico													
4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING: <table border="1"> <tr> <td>☒ MR. ☐ MRS. ☐ MISS ☐ MS.</td> <td>HEIGHT 6'1"</td> <td>WEIGHT 220</td> </tr> <tr> <td>DATE OF BIRTH April 3, 1944</td> <td>COLOR HAIR Blonde</td> <td>COLOR EYES Blue</td> </tr> <tr> <td>PHONE NUMBER WHERE EMPLOYED (202) 381-5263</td> <td colspan="2">SOCIAL SECURITY NUMBER 265-66-4056</td> </tr> <tr> <td colspan="3">OCCUPATION Curator of Birds</td> </tr> </table>		☒ MR. ☐ MRS. ☐ MISS ☐ MS.	HEIGHT 6'1"	WEIGHT 220	DATE OF BIRTH April 3, 1944	COLOR HAIR Blonde	COLOR EYES Blue	PHONE NUMBER WHERE EMPLOYED (202) 381-5263	SOCIAL SECURITY NUMBER 265-66-4056		OCCUPATION Curator of Birds			5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING: EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION National Museum of Natural History Smithsonian Institution Washington, D.C. 20560	
☒ MR. ☐ MRS. ☐ MISS ☐ MS.	HEIGHT 6'1"	WEIGHT 220													
DATE OF BIRTH April 3, 1944	COLOR HAIR Blonde	COLOR EYES Blue													
PHONE NUMBER WHERE EMPLOYED (202) 381-5263	SOCIAL SECURITY NUMBER 265-66-4056														
OCCUPATION Curator of Birds															
6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED Puerto Rico		7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO (If yes, list license or permit numbers) Federal Permit No. PRT-2-731 BA													
8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSED? ☐ YES ☒ NO (If yes, list jurisdiction and type of document) Puerto Rican Commonwealth Permit applied for		9. DESIRED EFFECTIVE DATE April 1, 1977													
10. DURATION NEEDED 3 months		11. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED. 17.22													
CERTIFICATION															
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.															
SIGNATURE (In ink) 		DATE September 24, 1976													
1. Puerto Rican Whip-poor-will <i>Caprimulgus noctitherus</i> , 2 adult males and 2 adult females, Puerto Rican Yellow-shouldered Blackbird <i>Agelaius xanthomus xanthomus</i> , 2 adult specimens; taking and importing birds for preparation as museum specimens to include complete skeletons and flat skins.		3. Skeletal material of the above taxa does not exist in any museum known to the applicant and cannot be obtained without removing specimens from the wild.													
2. The wildlife sought in this permit is still in the wild.		4. N.A. 5. The specimens will immediately be added to the collections of the U.S. National Museum of Natural History, Smithsonian Institution, Washington, D.C. 20560.													

6. N.A.

7. N.A.

Permission is hereby sought to collect 4 specimens (2 adults of each sex) of the Puerto Rican Whip-poor-will (*Caprimulgus noctitherus*) and 2 adults of Yellow-shouldered Blackbird (*Agelaius xanthomus*) for scientific purposes. Collection would be done by the most expeditious method, either by trapping with mist nets or shooting with small bore collecting ammunition. The specimens so collected would be prepared as skeletons and flat skins to be placed immediately in the collections of the National Museum of Natural History, Division of Birds, Washington, D.C. 20560.

Several extensive and highly significant Pleistocene fossil bird collections have recently been made in Puerto Rico. In order to analyze these important collections, it is necessary to have comparative skeletal material of existing species to identify the fossils and to determine the extent of evolutionary change that may be observed between the fossil specimens and existing forms. Also, in the case of the Whip-poor-will, skeletal material would help immeasurably in determining the taxonomic status of the form (whether it is a full species or a subspecies of North American *Caprimulgus vociferus*), since this is still a moot point. Furthermore, additional skins of this species are desirable to determine the extent of seasonal and age variation in plumage. It is presently known from only 2 (skin) specimens and there is no skeletal material whatsoever available for the species.

Dr. Cameron B. Kepler of the Patuxent Wildlife Research Center, who has done the basic research on the Whip-poor-will assures us that the existing populations would be in no way further endangered by the collection of two pairs, since the present habitat is now occupied at carrying capacity and population pressure forces some individuals into submarginal habitat. If approved, the collection of these 2 endangered species, and other non-endangered specimens of the Puerto Rican avifauna would take place sometime in the spring of 1977. A Federal permit for scientific collecting (of non-endangered species) in Puerto Rico has been obtained and a request for a Commonwealth permit has been submitted to the Puerto Rico Department of Natural Resources.

The applicant has had long experience with collection and preparation of birds as museum specimens and has published extensively on systematics and paleontology of birds, particularly of the West Indies. The present project is part of an extensive investigation of the evolution and paleontology of the vertebrate fauna of Puerto Rico and other West Indian islands.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street, NW, Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. This application has been assigned File Number PRT 2-406-07; please refer to

this number when submitting comments. All relevant comments received on or before December 9, 1976 will be considered.

Dated: November 1, 1976.

LOREN K. PARCHER,
Acting Chief, Division of Law
Enforcement, U.S. Fish and
Wildlife Service.

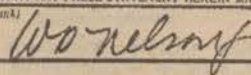
[FR Doc.76-32885 Filed 11-8-76;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Regional Director, Region 2, Regional Director, Region 4, U.S. Fish and Wildlife Service, Post Office Box 1806, Albuquerque, New Mexico 87103; W. O. Nelson, Jr., Regional Director, Albuquerque.

 DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION		1. APPLICANT'S RESIDENCE (If different from above) ☐ IMPORT/EXPORT LICENSE ☒ PERMIT													
1. APPLICANT (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested) Regional Director, Region 2 Regional Director, Region 4 U. S. Fish and Wildlife Service Post Office Box 1306 Albuquerque, NM 87103		2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED. Live trap, harass, transport, propagate, release, and hold red wolves (<i>Canis rufus</i>) for the purpose of preserving the species.													
4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING <table border="1"> <tr> <td>☐ MR. ☐ MRS. ☐ MISS ☐ MS.</td> <td>HEIGHT</td> <td>WEIGHT</td> </tr> <tr> <td>DATE OF BIRTH</td> <td>COLOR HAIR</td> <td>COLOR EYES</td> </tr> <tr> <td>PHONE NUMBER WHERE EMPLOYED</td> <td colspan="2">SOCIAL SECURITY NUMBER</td> </tr> <tr> <td colspan="3">OCCUPATION</td> </tr> </table>		☐ MR. ☐ MRS. ☐ MISS ☐ MS.	HEIGHT	WEIGHT	DATE OF BIRTH	COLOR HAIR	COLOR EYES	PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER		OCCUPATION			5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION Federal Fish and Wildlife agency.	
☐ MR. ☐ MRS. ☐ MISS ☐ MS.	HEIGHT	WEIGHT													
DATE OF BIRTH	COLOR HAIR	COLOR EYES													
PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER														
OCCUPATION															
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT Texas, Washington, S.C., and Louisiana		NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC. 505/766-2321 W. O. Nelson, Jr., Regional Director IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED													
6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED Texas, Washington, S.C., and Louisiana		7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO (If yes, list license or permit numbers) Red Wolf Permit - PRT 8-51-C Various appropriate permits													
8. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF \$		10. DESIRED EFFECTIVE DATE 9/20/76													
11. DURATION NEEDED 12/31/79		2. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (39 CFR 30.121-121.121) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED. 50 CFR 17.22, Attachments													
CERTIFICATION I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER D OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.															
SIGNATURE (In ink) 		DATE 9/16/76													

RED WOLF PERMIT

1. Red Wolf, *Canis rufus*. All ages and both sexes. To cover: live trap, harass, transport, propagate, release, and hold.
2. Red wolves to be covered occur in the wild, removal from the wild, and born in captivity.
3. See attachments.
4. All red wolves USFWS has removed from the wild were removed from Texas or Louisiana; all captive wolves are at the red wolf facilities at Tacoma Zoo, Washington; all captive born red wolves were born at the Tacoma Zoo.
5. Tacoma Zoo, Washington (see attachments) and USFWS facilities.
6. NA (see attachments).
7. Attached.
8. NA (see attachments).

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. This application has been assigned File Number PRT 2-389-07; please refer to this number when submitting comments. All relevant comments received on or before December 9, 1976 will be considered.

Dated: November 1, 1976.

LOREN K. PARCHER,
Acting Chief, Division of Law
Enforcement, U.S. Fish and
Wildlife Service.

[FR Doc.76-32888 Filed 11-8-76;8:45 am]

UNIVERSITY OF MINNESOTA

Amendment To Permit for Marine Mammals

A permit (PRT 2-122) was issued on July 12, 1976, to the University of Minnesota (Dr. Donald B. Siniff), St. Paul, Minnesota, to conduct activities with SEA OTTERS (*Enhydra lutris*), for the purpose of scientific research.

On July 16, 1976, a notice of the issuance of the permit was published (41 FR 29447-48).

Notice is hereby given that on October 22, 1976, Amendment No. 1 was issued, to include experimentation with oil applications on sea otters.

The permit and amendment are available for public inspection during normal business hours at the Bureau's office, Suite 600, 1612 K Street, N.W., Washington, D.C.

Dated: November 2, 1976.

LOREN K. PARCHER,
Acting Chief, Division of Law
Enforcement, U.S. Fish and
Wildlife Service.

[FR Doc.76-32886 Filed 11-8-76;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 29, 1976. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by November 19, 1976.

JERRY L. ROGERS,
Acting Chief, Office of Archeology and Historic Preservation.

DELAWARE

Sussex County

Lewes, Russell, William, House, 410 Pilot Town Rd.
Lewes vicinity, Cape Henlopen Archeological District, E of Lewes.

INDIANA

Hancock County

Greenfield vicinity, Lilly Biological Laboratories, W of Greenfield off U.S. 40.

KENTUCKY

Fleming County

Elizaville, Elizaville Presbyterian Church, KY 32.

Franklin County

Frankfort vicinity, Archeological Site 15 Fr 34, N of Frankfort.
Frankfort vicinity, Archeological Site 15 Fr 49, E of Frankfort.
Frankfort vicinity, Archeological Site 15 Fr 302 A, NW of Frankfort.
Harvieland vicinity, Archeological Site 15 Fr 28, E of Harvieland.
Harvieland vicinity, Archeological Site 15 Fr 52, NE of Harvieland.
Polsgrove vicinity, Archeological Site 15 Fr 7, S of Polsgrove.

Garrard County

Lancaster vicinity, Camp Dick Robinson Headquarters, 7 mi. NW of Lancaster on U.S. 27.

Green County

Greensburg, Greensburg Academy, 101 2nd St.

Henry County

New Castle, Henry County Courthouse, Jail, and Warden's House, Courthouse Square.

Shelby County

Shelbyville vicinity, Washburn, Benjamin, House, 8 mi. N of Shelbyville on Bellevue Pike.

Wayne County

Mt. Pisgah, Adkins-Hurt Mill, off KY 167.

MAINE

Aroostook County

Van Buren vicinity, Acadian Village Historic District, N of Van Buren on U.S. 1.

Kennebec County

China, China Village Historic District, ME 9.
Mt. Vernon vicinity, Beck, Khr, House, W of Mt. Vernon off ME 41.
Waterville, Waterville Post Office, Main and Elm Sts.
Winslow vicinity, Brick School, S of Winslow on Cushman Rd.

Knox County

Rockland, Knox County Courthouse, 62 Union St.

Lincoln County

Boothbay Harbor, Boothbay Harbor Memorial Library, ME 27.

Oxford County

Gilead vicinity, Peabody Tavern, E of Gilead on U.S. 2.

York County

Hollis Center vicinity, Wiggin, Kate Douglas, House, E of Hollis Center on Salmon Falls Rd.

MASSACHUSETTS

Hampshire County

Northampton, Coolidge, Calvin, House, 19-21 Massasoit St.

Middlesex County

Concord, Monument Square-Lexington Road Historic District, MA 2A.
Weston vicinity, Train, Samuel, House, S of Weston, 342 Winter St.

Norfolk County

Brookline, St. Mark's Methodist Church, 90 Park St.

Worcester County

Lancaster, Center Village District, irregular pattern along Main St.

NEW YORK

New York County

New York, DeVinne Press Building, 393-399 Lafayette St.

NORTH CAROLINA

Cumberland County

Fayetteville, Belden-Horne House, Ramsey St. (proposed move).

OHIO

Allen County

Lima, Neely-Sieber House, 620 W. Spring St.

Brown County

Decatur vicinity, Sutton House, E of Decatur on SR 125.

Champaign County

Urbana, Nutwood Place, 1428 Nutwood Pl.

Clermont County

Batavia vicinity, East Fork Site, S of Batavia.
Felicity vicinity, Bullskin Creek Site, S of Felicity.
Milford vicinity, Pfarr Log House, SE of Milford on Shayler Run Rd.
Mt. Olive vicinity, Winter, William, Stone House, N of Mt. Olive on OH 133.

Columbiana County

Hanoverton, Hanoverton Canal/Town District, U.S. 30.

Cuyahoga County

Independence, Independence Presbyterian Church, U.S. 21.

Darke County

Greenville, Darke County Courthouse, Sheriff's House and Jail, 4th and Broadway.
Greenville, Robeson, Dr. Donovan, House, 330 W. 4th St.

Delaware County

Harlem vicinity, Cook, John, Farm, E of Harlem at Jct. of SR 18 and SR 27.

Franklin County

Riverlea, Russell, Mark, House, 5805 N. High St.
Westerville vicinity, Osborn, Charles S., House, S of Westerville at 5785 Cooper Rd.

Hamilton County

Cincinnati, Our Lady of Cincinnati College, 2220 Victory Pkwy.
Cincinnati vicinity, Williams, W. L., House, 280 Anderson Ferry Rd.

Harrison County

Freeport, Reaves, John, House, Public Sq.

Highland County

Buiford vicinity, Hiron-Brown House, SW of Buiford on Guernsey Rd.

Lucas County

Toledo, Monroe Street Commercial Buildings, 513-623 Monroe St.
Waterville, Waterville Commercial District, 3rd St.

Montgomery County

Dayton, Brown, Samuel N., House, 1633 Wayne Ave.
Dayton vicinity, Taylorsville Canal Inn, 4240 Taylorsville Rd.

Morrow County

Mt. Gilead, Floral Hall, Morrow County Fairgrounds.

Muskingum County

Zanesville vicinity, Five Mile House, S of Zanesville off U.S. 22.

Putnam County

Glandorf, St. John The Baptist Roman Catholic Church, Main St. and SR 694.

Richland County

Mansfield, Renner and Weber Brewery, 79 E. 4th St.

Ross County

Chillicothe vicinity, Anderson, Levi, House, W of Chillicothe on Anderson Station Rd.
Waverly, Waverly Canal District, U.S. 23.

Stark County

Magnolia vicinity, Seven Ranges Terminus, W of Magnolia at Jct. of Stark, Tuscarawas, and Carroll counties.

Summit County

Akron, Werner Company Building, 109 N. Union St.
Barberton, Anna Dean Farm, OH 619.

TEXAS**Comal County**

New Braunfels, Comal County Courthouse, N. Seguin Ave.

Dallas County

Dallas, Dallas County Courthouse, Houston and Commerce Sts.

Wise County

Decatur, Wise County Courthouse, Public Sq.

UTAH**Grant County**

Moab vicinity, Elk Mountain Mission Fort Site, NW of Moab off U.S. 160.

Sevier County

Joseph vicinity, Parker, Joseph William, Farm, 2.5 mi. NE of Joseph.

VIRGINIA**Warren County**

Front Royal vicinity, Flint Run Archeological District, SW of Front Royal.

[FR Doc.76-32921 Filed 11-8-76;8:45 am]

Office of Hearings and Appeals

[Docket No. M 76X679]

B AND J COAL CO.**Petition for Modification of Application of Mandatory Safety Standard**

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), B and J Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its No. 2 Mine, located in Letcher County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches, and

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

Petitioner believes that the installation of canopies on its equipment would create a hazard to the operators of this equipment.

The pieces of mining equipment for which Petitioner seeks modification of this standard and their heights are:

2 Porter End Dump Buggies, 30 inches.
1 Paul's Roof Bolter, 30 inches.

The No. 2 Mine is in the Hazard No. 4 seam, which ranges from 40 to 45 inches in height. Petitioner states that it encounters rolling top each day there. There are also rolls in the floor which contribute to the difficulty of using canopies. Installation of canopies limits the visibility of the operators of the equipment and creates a hazard to them as well as other employees in the mine.

Petitioner states that since the operator's visibility is limited by the canopy, the installation of canopies could cause accidents.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,

Director,

Office of Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc.76-32901 Filed 11-8-76;8:45 am]

[Docket No. M 76X682]

BEECHTREE COAL COMPANY, INC.**Petition for Modification of Application of Mandatory Safety Standard**

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Beechtree Coal Company, Inc., has filed a petition to modify the application of 30 CFR 75.1710 to its No. 4 Mine, located in Floyd County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a)

be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

- (1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;
- (2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;
- (3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;
- (4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;
- (5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches.
- (ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and
- (6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

Application of this mandatory safety standard to Petitioner's Paul's Roof Bolter is not feasible, due to the presence of soft mine floor in the No. 4 Mine. The coal height in this mine is approximately 60 inches.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,

Director,

Office of Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc. 76-32902 Filed 11-8-76; 8:45 am]

[Docket No. M 76X647]

CAMP COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Camp Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its No. 3 Mine, located in Buchanan County, Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (1) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

- (1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;
- (2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;
- (3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;
- (4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;
- (5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches.
- (ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and
- (6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner feels that installing canopies on the equipment in this mine would create a hazard to the equipment operators due to a lack of visibility and a lack of mobility.
2. The following equipment will be modified:

Quantity	Name	Height (inches)	Length (feet)	Width (feet)
1	Epling spinner.....	25	16	5
1	Royal cutting machine.....	25	16	5
1	Paul Elswick roof bolter.....	28	8	4 1/4
1	Mescher tractor.....	24	9	5

3. The No. 3 Mine is in the Blair seam which ranges from 30 inches to 32 inches in height. Petitioner feels that cabs or canopies would have to be built too close to the machine body, thus cutting visibility in half. A lack of mobility would result from the fact that the operator would be cramped and have greater difficulty handling the machine. Also, the machine dragging the top in sections could damage roof bolts and half headers holding the top or hang the motor thus rendering the entire piece of equipment immobile. Petitioner further feels that the impact of the cab striking the top could injure the operator.

4. The Petitioner's proposed alternate system is that of roof-bolted haulage up to within 10 feet of the face of the coal. Also, a training program concentrating on proper inspections on roof support, periodic inspections of equipment safety devices and regular drills in handling of equipment would be implemented.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,

Director,

Office of Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc. 76-32903 Filed 11-8-76; 8:45 am]

[Docket No. M 76-560]

CAMP FORK FUEL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Camp Fork Fuel Co., has filed a petition to modify the application of 30 CFR 75.1710 to its No. 4 Mine, located in Elkhorn City, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

To be read in conjunction with § 75.1710 is 30 CFR 75.1710-1 which in pertinent part provides:

... Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

- (1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;
- (2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;
- (3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;
- (4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;
- (5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches.
- (ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and
- (6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. The height of the coal in Petitioner's No. 4 Mine ranges between 36 and 44 inches.

2. Petitioner's equipment consists of four S & S tractors and a Acme roof bolting machine.

3. The Lower Elkhorn seam has repeated ascending and descending grades which create dips in the coalbed; therefore the installation of canopies could destroy the roof support.

4. The vision of the equipment operators is limited with canopies installed, creating hazardous conditions for all mine employees.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc. 76-32904 Filed 11-8-76; 8:45 am]

[Docket No. M 76-318]

CLAYMON AND ABRAM ADKINS COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Claymon and Abram Adkins Coal Co., has filed a petition to modify the application of 30 CFR 75.1710 to its No. 15 Mine, located in Pike County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The require-

ments of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches;

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches; and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner's equipment consists of two battery tractors and a roof bolting machine.

2. The subject mine is located in the lower Elkhorn seam which ranges in height from 36 to 42 inches. The coal seam has consistent ascending and descending grades, thus creating dips in the coalbed. As a result of these dips, it is necessary to install the canopies in such a manner as to prevent them from rubbing against the roof and possible destroying roof support.

3. Installation of canopies on equipment allows only a 23-inch vertical operating compartment, thus limiting the vision of the equipment operators and creating a hazard to them as well as to the other employees in the mine.

4. Petitioner feels that since the equipment operators' vision is impaired by the position required in order to be seated in the decks, that the installation of canopies could be a contributing factor in any accident which may occur.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc. 76-32905 Filed 11-8-76; 8:45 am]

[Docket No. M 76X656]

EASTERN ASSOCIATED COAL CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c)

(1970), Eastern Associated Coal Corp., has filed a petition to modify the application of 30 CFR 75.1710 to its Wharton No. 6 Mine, located in Boone County, West Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches;

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches; and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner feels that installing canopies on the equipment in this mine would create a hazard to the equipment operators.

2. Petitioner's equipment consists of one Jeffrey 120 L continuous mining machine, one Galis 300 roof bolting machine, one 14 BU9 Joy loading machine, one 18SC-6 Joy shuttle car, one 16 RB Joy cutting machine, One Elkhorn scoop and one Galis coal drill.

3. The average "coal seam heights" in the Wharton No. 6 Mine range from 40 to 43 inches. An average of 4- to 7-inch decrease in the effective average height occurs as a result of the installation of supplemental supports and wedges installed in accordance with the approved roof control plan. In addition, the natural undulations and rolls of the coal seam result in ascending and descending grades that further lower the effective height. The average "mining heights" in the Wharton No. 6 Mine range from 28

4. Petitioner's experience indicates the to 31 inches. Taken as a whole, these conditions tend to limit and/or prevent the safe use of cabs and canopies on electric face equipment used in the Wharton No. 6 Mine.

application of the mandatory standard will result in a diminution of safety to miners for the following reasons:

(a) Several instances occurred where canopies became wedged against the roof.

(b) Employees strongly object to operating machinery so equipped and allege a diminution of safety resulting from impaired vision and being required to operate in cramped positions. The impaired vision and cramped positions cause the following hazards and unsafe practices:

(1) Miners attempt to operate the machinery while standing between it and the rib, thus incurring a risk of being crushed should the machine slue.

(2) The combination of impaired vision and cramped positions cause the operator to expose his body and appendages, such as head and feet, to the risk of being crushed between the machine and rib.

(3) Ingress and egress from the cab is limited and effectively prevents quick escape when mining conditions warrant such escape.

(4) Impaired vision is given as a major cause by machine operators for the damaging or severing of power cables by running over them.

(5) Impaired vision subjects the operator and fellow employees to increased risks of injury because the operator cannot adequately see other employees and/or equipment.

5. Petitioner asserts that technology does not presently exist to enable it to equip its self-propelled electric face equipment with suitable canopies to protect and provide for the safety of the operator of the equipment, and that presently approved roof support which is deemed satisfactory for all other mine personnel will adequately insure the safety of the equipment operators.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc.76-32908 Filed 11-8-76;8:45 am]

[Docket No. M 76X654]

FRANKLIN POLICE COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c)

of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Franklin Police Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its Buffalo No. 2 Mine located in Garrett County, Maryland.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Because of the nature of the equipment and the nature of the mine, it is not possible to operate the equipment with canopies thereon. The height of the mine is such that with the canopies it creates a greater danger to the employees while working than there is without the canopies.

2. Petitioner's equipment consists of electric face equipment.

3. The installation of canopies on its mining equipment would not guarantee any more protection to the miners, but would instead constitute a hazard.

REQUESTS FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department

of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc.76-32907 Filed 11-8-76;8:45 am]

[Docket No. M 76X645]

KERMIT COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Kermit Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its No. 1 Mine located in Mingo County, West Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner feels that installing canopies on the equipment in this mine has created a hazard to the equipment operators.

2. Petitioner's equipment consists of self-propelled electric face equipment.

3. The equipment is presently equipped with canopies. The Petitioner is seeking permission to remove the canopies because the canopies are shearing the heads off of roof bolts or bending the roof bolthead area thus diminishing the effectiveness of the roof control plan. Also, in some cases, to provide room for the canopies on said equipment the workers must mine a portion of the roof, thereby disturbing the roof rock and creating a less than ideal roof control plan, all of which creates a greater hazard of roof falls.

4. The canopy impairs the visibility of the worker operating the equipment and increasing the likelihood of accidents causing injury to the worker-operator and others in the area of the equipment.

5. Removing part of the roof in order to provide room for the canopies creates prohibitive costs on the part of the company for mining coal less than 60 inches in height.

REQUESTS FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc.76-32908 Filed 11-8-76;8:45 am]

[Docket No. M 76X680]

MT. RUN COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), the Mt. Run Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its No. 5 Mine, located in Preston County, West Virginia. 30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a),

be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

- (1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;
- (2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;
- (3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;
- (4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;
- (5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches, (ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and (6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

Petitioner states that it is unable to comply with this requirement, due to conditions in the No. 5 Mine. The height of the coal in the working places is not uniform, ranging from 38 to 50 inches. The bottom of the mine is rocky.

Petitioner seeks modification of this section as regards the following equipment: 1 35 BB Jeffery cutting machine, 1 Jeffery roof bolter with a swinging boom, and 2 Elkhorn scoops.

Petitioner states that it does not know of any way to install canopies on the Jeffery cutting machine and roof bolter, and that although the Elkhorn scoops are designed for use with canopies, it would be impractical and very dangerous to use them with canopies.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc.76-32909 Filed 11-8-76;8:45 am]

[Docket No. M 76X677]

OLGA COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), the Olga Coal Company has filed a petition to modify the application of

30 CFR 75.1710 to its Olga Mine, located in McDowell County, West Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

- (1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;
- (2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;
- (3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;
- (4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;
- (5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches, (ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and (6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner's Olga Mine is located at Coalwood, McDowell County, West Virginia. The coal seam being mined is the Pocahontas No. 4 seam.

2. The distance from the floor to the finished roof in this mine varies depending on floor hooving, seam pinching and other factors; generally it ranges between 42 and 50 inches.

3. For purposes of the regulation at 30 CFR 75.1710-1, the mining height in this mine is 30 inches.

4. The regulatory requirements for installation of cabs and canopies became applicable to this mine on January 1, 1976; accordingly, all items of equipment in the mine have been retrofitted with appropriate protective devices to meet the requirements of the regulations.

5. Among the items of equipment which have been retrofitted with canopies are two Galis Model 3500 Dual Boom roof bolting machines. Each of the machines has three sets of operating controls over which canopies have been installed: the tramping controls located on the right side near the rear of each

machine, and the boom controls located outside each boom on the front of both machines.

6. Although the canopy over the tram controls was retrofitted with relatively little difficulty, the canopy at each of the boom controls was installed only after considerable engineering difficulties were overcome. Now that a canopy is installed over each of the boom controls, however, the roof bolter does not perform as effectively as previously.

7. In the Petitioner's view, there has resulted a diminution of overall safety, because while protection has been provided for the boom operator at the controls, roof support in general is subject to being degraded.

8. With canopies over the boom controls, the machine cannot bolt as close to the ribs as previously; in addition, operators are now subjected to awkward positioning and discomfort while they are operating the boom controls and as a result their effectiveness in installing roof bolts is being decreased.

9. The two roof bolting machines in question are in excellent condition and, without the canopies over the boom controls, are very well suited to the roof bolting needs of this mine, particularly to the need of bolting close to the ribs.

10. The Petitioner does not have an alternate method for achieving the safety results intended by 30 CFR 75.1710-1, but Petitioner maintains that application of 30 CFR 75.1710-1 to the boom controls of the Galis 3500 roof bolting machines in this particular mine is resulting in a diminution of overall safety and for this reason, Petitioner seeks leave to remove the canopies presently installed over the boom controls of the roof bolting machines and to operate these machines with canopies over the tramming controls only.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,

Director,

Office of Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc.76-32899 Filed 11-8-76; 8:45 am]

[Docket No. M 76X678]

OLGA COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Olga Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its Road Fork No. 1

Mine, located in McDowell County, West Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches, and

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. The Road Fork No. 1 Mine operates two production shifts per day utilizing continuous mining methods. Approximately 600 clean tons of coal are produced each day.

2. The distance from the floor to the finished roof in this mine varies significantly, but generally ranges between 35 and 48 inches. As a result, all face equipment in this mine must be capable of operating in the lowest parts of the coal seam.

3. For purposes of the regulation at 30 CFR 75.1710-1 the mining height in this mine is 23 inches.

4. Under existing regulations, as amended June 9, 1976, the canopies or cabs requirement, unless modified, will not become applicable to this mine until July 1, 1978.

5. On the basis of present projections of available coal, it is not likely that this mine will be able to continue operating for any significant length of time beyond the July 1, 1978, date.

6. The electric face equipment subject to the regulation in this mine consists of two Model 265 HH Lee-Norse continu-

ous miners, two Model 300 Galis roof bolters, two Model 21SC Joy shuttle cars and two Model 18SC Joy shuttle cars.

7. This equipment operates in rooms which are cut 18 feet wide and, as previously stated, 35 to 48 inches in height; entries and breakthroughs are driven on 75 by 75 foot centers.

8. Complete roof bolts, with supplemental timbers where needed, are being used to support the roof at this mine.

9. The Petitioner has investigated various methods of installing canopies or cabs without encountering a single method which would be safe in its mines.

10. The Petitioner has also investigated the possibility of utilizing alternate devices, which could be made the subject of an application to the Assistant Administrator of Technical Support, but Petitioner has been unable to develop or discover any alternate device which would be safe and otherwise suitable for use in the Road Fork Mine.

11. Thus, the Petitioner does not have an alternate method for achieving the safety results intended by 30 CFR 75.1710-1, but petitioner maintains that application of 30 CFR 75.1710-1 to Petitioner's mine at its present mining height will result in a serious diminution of safety to the miners.

12. Petitioner will, however, train and continuously retrain the miners in maintenance of strict roof control in accordance with roof control procedures approved by MESA and the State Department of Mines.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,

Director, Office of

Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc.76-32910 Filed 11-8-76; 8:45 am]

[Docket No. M 76X685]

PAGE FORK COAL COMPANY, INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Page Fork Coal Company, Inc., has filed a petition to modify the application of 30 CFR 75.1710 to its No. 2 Mine, located in Buchanan County, Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed

canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having heights less than 24 inches.

The substance of Petitioner's statement is as follows:

Petitioner's mine is located in the Widow Kennedy coal seam, whose thickness is 36 to 48 inches. The average height of the coal seam in locations where equipment subject to this regulation is being used is 40 to 46 inches.

The pieces of mining equipment for which petitioner seeks modification of this standard and their heights are:

	Inches
1 14 BU 7 Joy loading machine.....	32
1 Royal cutting machine.....	30
1 Paul Elswick roof bolting machine.....	28
2 Epling battery-powered tractors.....	25

Petitioner states that the coal seam at this mine is not uniform and that the top and bottom occasionally roll up and down. Petitioner asserts that equipment operators would refuse to run equipment with canopies. Petitioner proposes to constantly review its roof control methods and to train miners in safe roof control measures.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of

the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc.76-32911 Filed 11-8-76;8:45 am]

[Docket No. M 76X684]

PAGE FORK COAL COMPANY, INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Page Fork Coal Company, Inc., has filed a petition to modify the application of 30 CFR 75.1710 to its No. 1 Mine, located in Buchanan County, Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having heights less than 24 inches.

The substance of Petitioner's statement is as follows:

Petitioner's mine is located in the Widow Kennedy coal seam, whose thickness is 36 to 48 inches. The average height of the coal seam in locations where equip-

ment subject to this regulation is being used is 40 to 46 inches.

The pieces of mining equipment for which petitioner seeks modification of this standard and their heights are:

	Inches
1 14 BU 7 Joy loading machine.....	32
1 Royal cutting machine.....	30
1 Acme roof bolting machine.....	32
2 6 S/C Joy shuttle cars.....	32
1 Drill car.....	26

Petitioner states that the coal seam at this mine is not uniform and that the top and bottom occasionally roll up and down. The bottom has been coming up in numerous places creating "pot holes" which decrease the clearance between the machines and the roof. Petitioner asserts that equipment operators would have to lean out of the decks to operate this equipment if canopies were installed. Petitioner states that equipment operators refuse to run equipment with canopies, and that constant installation and removal of canopies would be necessary due to the nonuniform height of the mine. Petitioner proposes to constantly review its roof control methods and to train miners in safe roof control measures.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc.76-32912 Filed 11-8-76;8:45 am]

[Docket No. M 76-672]

PEABODY COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Peabody Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its Star Mine, located in Muhlenberg County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

- (1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;
- (2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;
- (3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;
- (4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;
- (5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches;
- (ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches;
- (6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. The minimum top at Petitioner's Star Mine is 56 inches where Petitioner is now operating and said top varies from a maximum of 58 inches to a minimum of 52 inches.

2. Certain safety hazards are created by the installation of cabs or canopies on the loaders, cutters, pinners, shuttle cars, scoops and tractors in use at the Star Mine.

3. Among the safety hazards created by the installation of cabs or canopies on the equipment listed in paragraph 2 herein are the following:

- (a) the equipment operator's field of vision is significantly reduced as a result of the close proximity of the cab or canopy top to the operator's compartment;
- (b) the operator's arm and leg movements are significantly restricted as a result of reduced space in the operator's compartment;
- (c) increased operator fatigue is caused by the reduced operator compartment space;
- (d) the significant increase in the height of the equipment creates the danger of destruction of line curtains and other similar ventilation devices which would cause substantially diminished air velocity; and
- (e) the operator's means of getting on and off the equipment is limited, thereby impairing his ability to escape from the equipment in an emergency.

4. Operators of the equipment listed in paragraph 2 herein, refuse to operate such equipment when equipped with cabs or canopies because the operators fear for their safety and the safety of other miners.

5. For the reasons herein set forth, the application of 30 CFR 75.1710-1 to the face equipment listed in paragraph 2 herein at all locations of Petitioner's Star Mine results in a diminution of safety to the miners at said mine.

6. As an alternative method in lieu of the application of 30 CFR 75.1710-1 to the face equipment listed in paragraph 2 above at the Star Mine Petitioner proposes the following:

(a) Petitioner will comply with all terms and provisions of its roof control plan for the Star Mine which was adopted and filed in accordance with 30 CFR 75.200;

(b) Petitioner has adopted and will continue a regular program of safety instruction for its employees designed to educate and train its employees in safety techniques and to eliminate employee exposure to problems inherent in mining with specific emphasis on problems relating to top and roof falls;

(c) Petitioner's management employees and its miners will make frequent tests of the top to determine its stability;

(d) Petitioner will continue to make job safety analysis studies to assure that roof control practices comply not only with company policy but federal and state requirements as well;

(e) Petitioner has endeavored to design and construct cabs and canopies which would be suitable for installation on the equipment listed in paragraph 2 above and which would not diminish the safety of miners. Petitioner has required its suppliers to attempt to design and make available such cabs and canopies. In cooperation with the MESA Technical Support Group, Petitioner will continue these efforts in the design and construction of such suitable cabs and canopies which will not diminish the safety of miners; and

(f) Petitioner will intensify its training and retraining programs involving the roof control plan and roof examination.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 26, 1976.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

[FR Doc. 76-32900 Filed 11-8-76; 8:45 am]

Office of Hearings and Appeals

[Docket No. M76X660]

SUGARLOAF MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c)

of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Sugarloaf Mining Company has filed a petition to modify the application of 30 CFR 75.1710 to its Sugarloaf No. 2 Mine, located in Sebastian County, Arkansas.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

- (1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;
- (2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;
- (3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;
- (4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;
- (5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches;
- (ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches;
- (6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. The Petitioner respectfully requests the modification of the application of the mandatory safety standard 30 CFR 75.1710-1(a) with respect to the subject mine for reason that the application of such standard will result in a reduction of safety to the miners.

2. The Petitioner avers that technology does not presently exist to enable it to equip its self-propelled electric face equipment with suitable canopies to protect and provide for the safety of the operators of said equipment. The Petitioner further avers that based upon its recent experience with presently available canopies, the use of these canopies results in a reduction of safety to the miners in the above-named mine. The Petitioner's experience indicated the following:

(a) The Petitioner operates one mine in the lower Hartshorne Coal Seams where the coal is frequently 20 inches in height and the top or bottom has to be

brushed to clear the equipment and at present is operating mining equipment averaging 30 to 31 inches in height. The above-named equipment is the lowest available at the present for seams of this height.

(b) While canopies of the type specified had the necessary height clearance in some instances under normal mining conditions, the necessary clearance diminished to zero when rolls or frequent adverse conditions were encountered. Our seam of coal averages 17 percent slope which also increases the danger to the operators of the self-propelled electric face equipment.

(c) When operating with the available canopies, the operator's vision is severely impaired to the point that operation of the equipment becomes hazardous to the operator and all other persons in the working area.

(d) Due to the combination of the severely limited vision and close confinement in the cab, appendages of the operator's body, such as his head and limbs hang out in such manner that they are in jeopardy of being crushed between the equipment and the coal rib.

(e) Ingress and egress from the cab is so limited that the operator is held captive and cannot escape when the action of the roof clearly would warrant a retreat.

(f) Because of close confinement in the cab and severely limited ingress to and egress from the canopies, it is felt that the operator will attempt to control the equipment from outside the protection of the canopies and in doing so create the hazard of being crushed between the equipment and the rib.

(g) In case of machine malfunction, cable damage, or power failure of any kind, or in the event of a machine fire, the operators of the equipment would be held captive by the canopy for an indefinite period depending on the circumstances.

(h) The operators of this type of equipment are under fully supported roof at all times provided by an approved roof control plan. Such roof support is deemed satisfactory for all other personnel in the mine including the helpers on self-propelled electric face equipment such as the continuous miner and the roof bolter. The helpers and other supporting personnel freely move around adjacent to the equipment under the protection of the proper roof support. Hence, the addition of canopies of this type presently available rather than providing additional safety for the operator, introduce a dangerous instrument capable of inflicting serious bodily harm or death.

(i) We are going beyond our roof control plan now and are installing 3-inch x 8-inch x 20-foot wooden headers which also reduces our working height. We are also using 6-inch x 16-inch roof bolt plates in conjunction with 6-inch x 6-inch plates which provide additional support and more bearing surface on the roof meaning improved roof support.

(j) Due to rolls and adverse conditions, the canopies would be constantly

striking the roof bolts and would be shearing or destroying the torque of the roof bolts on the section and reducing them to an inefficient state, thus exposing all employees to the hazard of a roof fall from damaged support.

3. The Petitioner only recovers 60 to 65 percent of the recoverable coal leaving the balance for roof support. No second mining or pillar retraction is practiced at the above-named mine.

4. The Petitioner avers that with respect to low-ceiling mines, the use of currently available canopies with mobile electric face equipment severely diminishes rather than increases the overall safety of the miners.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc. 76-32913 Filed 11-8-76; 8:45 am]

[Docket No. M 76X659]

VALLEY COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Valley Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its Valley No. 11 Mine, located in Indiana County, Pennsylvania. 30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner feels that installing canopies on the equipment in this mine would create a hazard to the equipment operators.

2. Petitioner's equipment consists of self-propelled electric face equipment.

3. Due to rolls and adverse roof conditions, the canopies are constantly striking the roof bolts, plates and bars destroying the torque of the roof bolts in the section, thus reducing their efficiency and exposing all employees to the hazard of a roof fall.

4. The combination of limited vision and close confinement in the cab which results from the installation of canopies creates a number of problems for the individual operator which results in a diminution in the overall safety of the miners.

5. Petitioner asserts that technology does not presently exist to enable it to equip its self-propelled electric face equipment with suitable canopies to protect and provide for the safety of the operators of the equipment, and that presently approved roof support which is deemed satisfactory for all other mine personnel will adequately insure the safety of the equipment operators.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc. 76-32914 Filed 11-8-76; 8:45 am]

[Docket No. M 76X658]

VALLEY COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301

(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Valley Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its Valley No. 12 Mine, located in Indiana County, Pennsylvania.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

- (1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;
- (2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;
- (3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;
- (4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;
- (5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,
(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and
- (6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner feels that installing canopies on the equipment in this mine would create a hazard to the equipment operators.
2. Petitioner's equipment consists of self-propelled electric face equipment.
3. Due to rolls and adverse roof conditions, the canopies are constantly striking the roof bolts, plates and bars destroying the torque of the roof bolts in the section, thus reducing their efficiency and exposing all employees to the hazard of a roof fall.
4. The combination of limited vision and close confinement in the cab which results from the installation of canopies creates a number of problems for the individual operator which results in a diminution in the overall safety of the miners.
5. Petitioner asserts that technology does not presently exist to enable it to

equip its self-propelled electric face equipment suitable canopies to protect and provide for the safety of the operators of the equipment, and that presently approved roof support which is deemed satisfactory for all other mine personnel will adequately insure the safety of the equipment operators.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearing and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc. 76-32915 Filed 11-8-76; 8:46 am]

[Docket No. M 76-556]

WESTMORELAND COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Westmoreland Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its Quinwood No. 7 Mine, located in Greenbrier County, West Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

- (1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;
- (2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner states that technology does not presently exist to equip its self-propelled electric face equipment with suitable canopies to insure the safety of the operators at its Quinwood No. 7 Mine.

2. Petitioner's experience with presently available canopies has indicated the following:

(a) While canopies of the type specified have the necessary height clearance most of the time during mining under normal conditions, the necessary clearance diminishes to zero when either the bottom or the full seam undulates or when rolls in the coal seam are encountered. Many canopies are torn off when they became wedged against the roof. The further use of these canopies inevitably will cause injuries to the operators.

(b) When working with the available canopies, the operator's vision is impaired to the point that use of the equipment becomes hazardous to the operator and to all other persons in the working area.

(c) Due to the combination of the limited vision and close confinement in the cab, appendages of the operator's body, such as his hands, feet, buttocks, or head, hang out in such manner that they are in jeopardy of being crushed between the equipment, posts, or coal rib.

(d) Ingress to and egress from the cab is so limited that the operator is held captive, and cannot escape when circumstances clearly would warrant retreat.

(e) Because of close confinement in the cabs, limited ingress to and egress from the cab under the canopies and lack of vision operators attempt to manipulate the controls from outside the equipment while standing between the equipment and the rib, thereby incurring the risk of being crushed.

(f) The operators of this type of equipment are under fully supported roof at all times, as provided by an approved full-roof bolting plan or a combination of roof bolts and posts. This support is deemed satisfactory for all other personnel in the mine, including helpers on self-propelled electric face equipment, such as the continuous miner and the bolter. The helpers and other supporting personnel freely move adjacent to the equipment under the protection of the proper roof support. Hence the addition of canopies of the type presently available, rather than providing additional safety for the operators, introduces an instrument capable of inflicting serious

bodily harm or death when visibility and necessary clearance are reduced to zero.

(g) Cutting machine operators and continuous miner operators cannot see the last row of roof bolts because the canopies impair their vision; such operators may, as a result, inadvertently go in by supported roof.

(h) Cutting machine operators and continuous miner operators cannot see the cutter lines, cutter bar, or cutter head due to impaired vision; as a result, places may be cut too wide and off center, thereby weakening the roof and creating roof fall hazards.

3. Technical support personnel from MESA, representatives of the miners, equipment operators, mine health and safety committees, and representatives of Westmoreland have worked together to attempt to modify the canopies in order to comply with the regulation. Such modifications have created additional hazards to the miners and have resulted in a diminution in safety.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc. 76-32916 Filed 11-8-76; 8:45 am]

[Docket No. M 76-343]

WINJAY COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Winjay Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its No. 1 Mine, located in Pike County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment including shuttle cars, which is employed in the active workings of each underground coal mine on and

after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches;

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. The equipment being used in Petitioner's No. 1 Mine consists of:

- (a) 1 D-1 Acme pinning machine.
- (b) 1 PAS 16 S Kersey scoop.
- (c) 2 No. 86 Elkhorn scoops.
- (d) 1 Joy 12 RU cutting machine.
- (e) 1 Owens coal drill.

2. The seam of coal which Petitioner is presently mining has an uneven top and is 38 to 40 inches in height.

3. The road bed is rough, there is water in the roadway, and there are numerous humps and bumps in the haulage-way.

4. The top of the seam in the area which Petitioner is mining is composed of 4 to 6 inches of soft draw slate. Petitioner is presently using 2-inch half headers on the roof pins. The installation of canopies on the equipment would cause to equipment to tear down the half headers creating a danger to the safety of the miners.

5. The installation of canopies on the equipment would also impair the vision of the men operating the equipment, thus creating another hazard to the safety of the men.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc. 76-32917 Filed 11-8-76; 8:45 am]

[Docket No. M 76X676]

YOUNGSTOWN MINES CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Youngstown Mines Corporation has filed a petition to modify the application of 30 CFR 75.1710 to its Dehue Mine, located in Logan County, West Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having heights less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner's Dehue Mine is located at Dehue, Logan County, West Virginia. The coal seam being mined is the Eagle No. 2 gas seam.

2. The distance from the floor to the finished roof in this mine varies significantly, but generally ranges from a low of 33 to a high of 54 inches. As a result, all face equipment in this mine must be capable of operating in the lowest parts of the coal seam.

3. For purposes of the regulation at 30 CFR 75.1710-1, the mining height in this mine is 21 inches.

4. The regulatory requirements for installation of cabs and canopies will be-

come applicable to this mine on July 1, 1978.

5. Petitioner has investigated various ways of installing canopies on the equipment in this mine; however, those canopies which were installed had to be removed because undulations of the coal seam make use of such canopies hazardous.

6. The problem with the canopies was particularly acute in this mine because the coal seam thickness varies quite substantially within very short distances through which the equipment must operate.

7. Among the hazards encountered were striking of the roof, reduced maneuverability and limitations on operator vision and comfort.

8. The potential for accidents and injuries is increased when canopies are installed because roof striking weakens overhead supports; operator fatigue caused by the cramped position under the canopy reduces each operator's safe operating capability, and reduced vision increases the danger of collisions with persons or objects around the machine; reduced vision also induces operators to lean out of the machines and thereby jeopardize their own safety as well.

9. Although Petitioner has no alternative method for achieving the safety results intended by 30 CFR 75.1710-1, Petitioner maintains that in light of current technology the application of this regulation to this particular mine will result in a diminution of safety to its miners.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of
Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc. 76-32908 Filed 11-8-76; 8:45 am]

[Docket No. M 76-565]

ZEIGLER COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Zeigler Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its No. 9 Mine, located in Hopkins County Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars,

be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner operates the following types of electric face equipment: 21 SC, 10 SC Joy shuttle cars; 14 BU, 10 Joy loading machines; 320 Galis roof bolters; 15 RU Joy cutting machines; and TDF-24-A coal drills.

2. Petitioner has obtained canopies for most of the above-listed equipment which meet the structural capacity requirements of § 75.1710-1(d).

3. Petitioner has determined that the use of certified canopies on the face equipment creates the following safety hazards:

(a) Scraping and possible dislodgement of the supplementary roof control system;

(b) Significant reduction in the equipment operators' field of vision; and

(c) Reduced space in the operators' compartment which impairs the operators' movements necessary for the safe operation of the equipment, and leads to both physical and mental fatigue.

4. The height of the coalbed varies from 54 to 62 inches. Petitioner's roof control plan, in certain instances, requires that crossbars be used for supplementary support. This limits the maximum height of a canopy or cab to 42 inches, to insure that the equipment at all times avoids contact with the roof support system.

5. Petitioner does not seek to eliminate or delay the installation of certified can-

opies on face equipment where such installation is currently safe. However, Petitioner does seek to cooperate with MESA in developing an orderly plan and schedule for the installation of certified canopies where safety hazards are presented.

6. Petitioner prays for the entry of an order:

(a) Allowing Petitioner to remove those canopies already installed where it is found that such canopies are creating a greater hazard than those sought to be corrected; and,

(b) Granting to Petitioner sufficient time to work with the Assistant Administrator—Technical Support, equipment manufacturers, federal inspectors and district managers, and mine safety committees in developing and implementing a plan that will give electric face equipment operators the same degree of protection afforded by the canopies or cabs required under 30 CFR section 75.1710, without submitting them to the increased hazards caused by the installation of canopies in the present manner.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 9, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

NOVEMBER 1, 1976.

[FR Doc. 76-32918 Filed 11-8-76; 8:45 am]

Office of the Secretary DEPARTMENT OF THE INTERIOR WOC Appointment

OCTOBER 7, 1976.

Pursuant to section 302(a) of Executive Order 10647, the following information on a WOC appointee in the Department of the Interior is furnished for publication in the FEDERAL REGISTER:

Name of appointee: Julius Bleiweis.

Name of employing agency: U.S. Dept. of the Interior, Defense Electric Power Administration.

The title of the appointee's position: DEPA Director, NPCC.

The name of the appointee's private employer or employers: Northeast Power Coordinating Council.

The statement of "financial interests" for the above appointee is enclosed.

THOMAS S. KLEPPE,
Secretary of the Interior.

APPOINTEE'S STATEMENT OF FINANCIAL INTERESTS

In accordance with the requirements of section 302(b) of Executive Order 10647, I am filing the following statement for publication in the FEDERAL REGISTER:

(1) Names of any corporations of which I am, or had been within 60 days preceding my appointment, on October 7, 1976 as DEPA Director, NPCC, Defense Electric Power Administration, an officer or director: None.

(2) Names of any corporations in which I own, or did own within 60 days preceding my appointment, any stocks, bonds, or other financial interests: None.

(3) Names of any partnerships in which I am associated, or had been associated within 60 days preceding my appointment: None.

(4) Names of any other business which I own, or owned within 60 days preceding my appointment: None.

JULIUS BLEIWEIS.

OCTOBER 27, 1976.

[FR Doc.76-32919 Filed 11-8-76;8:45 am]

NATIONAL PETROLEUM COUNCIL

Meetings

Notice is hereby given for the following meetings:

(1) The National Petroleum Council's Committee on Enhanced Recovery Techniques for Oil and Gas in the United States and the Committee's Coordinating Subcommittee will meet on December 1, 1976, at 10:00 a.m., in the Ballroom West of the Stanford Court, California and Powell Streets, San Francisco, California.

The agenda includes the following items for review and discussion:

1. Draft report, Enhanced Oil Recovery, dated October 29, 1976.

2. Comments of National Petroleum Council members on draft report, Enhanced Oil Recovery, dated October 29, 1976.

3. Presentation of report at National Petroleum Council meeting of December 9, 1976.

4. Any other matters pertinent to the overall assignment of the Committee on Enhanced Recovery Techniques for Oil and Gas in the United States.

(2) The Coordinating Subcommittee will continue its meeting on December 2, 1976, at 9:00 a.m., in the Blue Room of the Stanford Court.

The agenda includes the following items for review and discussion:

1. Incorporation of the comments and suggestions of the Committee on Enhanced Recovery Techniques for Oil and Gas in the United States on the draft report, Enhanced Oil Recovery, dated October 29, 1976.

2. Any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

The purpose of the National Petroleum Council is to provide to the Secretary of the Interior, upon request, advice, information, and recommendations upon any matter relating to petroleum or the petroleum industry.

The meetings will be open to the public to the extent that space and facilities permit. Any member of the public may file a written statement with the Council either before or after the meetings. Interested persons who wish to speak at a meeting must apply to the Council and obtain approval in accordance with its established procedures.

Further information about the meetings may be obtained from Ben Tafoya, Office of the Assistant Secretary—Energy and Minerals, Department of the Interior, Washington, D.C. (telephone: 343-6226).

Dated: November 4, 1976.

ROBERT L. PRESLEY,
Staff Assistant—Emergency
Preparedness, Office of the
Assistant Secretary—Energy
and Minerals.

[FR Doc.76-32926 Filed 11-8-76;8:45 am]

INTERNATIONAL TRADE COMMISSION

[TA-201-17]

MUSHROOMS

Establishment of Time Limits for Public Testimony at Hearing

The United States International Trade Commission has established time limits for public testimony at the hearing in connection with its current investigation regarding imports of mushrooms. This investigation was instituted pursuant to section 201(b)(1) of the Trade Act of 1974 to determine whether mushrooms, prepared or preserved, except fresh or dried, provided for in item 144.20 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The investigation is the second within 1 year with respect to imports of mushrooms.

The hearing in connection with this investigation will be held at 10 a.m., e.s.t., on Thursday, November 11, 1976, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. The time limits applicable to public testimony at this hearing have been set as follows: Domestic producers—3 hours; importers—3 hours; other interests—1½ hours. These limits refer to the total time allowed to each class of participant for completion of both direct testimony and cross-examination.

By order of the Commission:

Issued: November 4, 1976.

KENNETH R. MASON,
Secretary.

[FR Doc.76-32977 Filed 11-8-76;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

VIRGIN ISLANDS STANDARDS

Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter

called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 11, 1974, notice was published in the FEDERAL REGISTER (38 FR 24896) of the approval of the Virgin Islands plan and adoption of Subpart S to Part 1952 containing the decision.

The Virgin Islands plan provides for the adoption of Federal standards as Virgin Islands standards by reference without publishing such regulations in full, provided that such regulations shall be clearly identified in the adopting regulation, and that copies of the FEDERAL REGISTER containing such regulations shall be maintained in the Office of the Lieutenant Governor, available for inspection by the public. On November 5, 1974, notice was published in the FEDERAL REGISTER approving the adoption by reference on March 21, 1974 of Federal Standards 29 CFR Parts 1910, 1918 and 1926, as Virgin Islands rules and regulations, 24 V.I.R.R. 36(b) 1, 2, and 3.

The Virgin Islands approved plan excludes Subpart D of 29 CFR Part 1926 (Occupational Health and Environmental Control), Subpart G of 29 CFR 1910 (Occupational Health and Environmental Control) and §§ 1910.13 (Ship repairing), 1910.14 (Shipbuilding), 1910.15 (Shipbreaking), and 1910.16 (Longshoring), which reference Parts 1915, 1916, 1917 and 1918 of 29 CFR. In addition, § 1910.19 (Asbestos Dust) of Part 1910 and Part 1919 (Gear Certification) are excluded by the scope of the Virgin Islands 18(b) plan. Notwithstanding the exclusion of Longshoring, 29 CFR Part 1918 has been adopted by reference since § 1926.605 (Marine Operations and Equipment) references 29 CFR Part 1918.

Section 1953.20 of 29 CFR provides that where "any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required." In response to Federal standard changes, the State has submitted by letters dated August 26, 1976 from Jean D. Larsen, Assistant Commissioner of the Virgin Islands Department of Labor and Director of the Division of Occupational Safety and Health, to Alfred Barden, Regional Administrator, and incorporated as a part of the plan, State certification documenting adoption of all changes and additions to Federal Standards. Regulations promulgated June 7, 1976, adopted all changes and additions to 29 CFR Parts 1910, 1918, 1926, as 24 V.I.R.R. 36(b) 1, 2, 3, up to and including March 14, 1976.

The authority to adopt such standards is contained in Title 3, Section 940 of the Virgin Islands Code. The adopting regulations were issued by Commissioner of Labor of the Virgin Islands Department of Labor and were approved and promul-

gated by the Governor of the Virgin Islands.

2. *Decision.* Having reviewed the Virgin Islands Regulations providing for the adoption of Federal standards by reference it has been determined that Virgin Islands Regulations are identical to Federal standards and are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during the normal business hours at the following locations: Office of the Regional Administrator, Region II, 1515 Broadway, Room 3445, New York, New York 10036; Office of the Associate Assistant Secretary for Regional Programs, Room N-3603, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Department of Labor, Government of the Virgin Islands, Dronigans Gade, Charlotte Amalie, St. Thomas, V.I. 00801, and at Hospital Street, Christiansted, St. Croix, V.I. 00820.

4. *Public participation.* Under 29 CFR 1953.2(2), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virgin Islands plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

(1) The standards are identical to the Federal standards and are therefore deemed to be at least as effective.

(2) The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective November 9, 1976.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 677)).

Signed at New York, New York, this 31st day of August 1976.

RICHARD J. ANDREE,
Acting Regional Administrator,
Occupational Safety and Health.

[FR Doc.76-32968 Filed 11-8-76; 8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 76-97]

NASA RESEARCH AND TECHNOLOGY ADVISORY COUNCIL PANEL ON RESEARCH Meeting

The NASA Research and Technology Advisory Council Panel on Research will meet on November 30 and December 1, 1976, at the NASA Langley Research Center, Hampton, Virginia 23665. The meeting will be held in Room 225, Building 1219. The purpose of this meeting is to gain firsthand knowledge of the research work and the management of university research at Langley Research

Center. The OAST Research Council will meet concurrently with the Panel on Research. Members of the public will be admitted on a first-come, first-served basis, limited by the seating capacity of the room which is about 50 persons. All visitors must sign in prior to attending the meeting.

The Panel on Research of the NASA Research and Technology Advisory Council serves in an advisory capacity only. There are 12 members on the Panel. The chairman is Professor A. Hertzberg. The following list sets for the approved agenda and schedule for the meeting of this Panel on Research on November 30 and December 1, 1976. For further information, please contact Mr. F. C. Schwenk, Area Code 202, 755-2488, at NASA Headquarters, Washington, D.C., or Dr. J. E. Duberg, Area Code 804, 827-2664, at the Langley Research Center.

NOVEMBER 30, 1976

Time	Topic
8 a.m.-----	Introduction. (Purpose: Welcome by Langley officials and remarks by the chairman on the conduct of the review.)
8:30 a.m.----	Parallel sessions on (a) aerodynamics, (b) structures, and (c) mathematics and computer science. (Purpose: Review of the in-house and university-sponsored research in the areas listed.)
1 p.m.-----	Parallel sessions on (a) fluid mechanics, (b) materials, and (c) instrumentation. (Purpose: Review of the in-house and university-sponsored research in the areas listed.)

DECEMBER 1, 1976

8:30 p.m.----	Parallel sessions on (a) flight dynamics and control, (b) noise, and (c) physics and chemistry. (Purpose: Review of the in-house and university-sponsored research in the areas listed.)
1 p.m.-----	Panel discussion. (Purpose: (1) To discuss and evaluate the presentations; (2) to make recommendations.)
3 p.m.-----	Meeting with center director. (Purpose: To inform center director of the findings and recommendations.)
4 p.m.-----	Adjournment.

Dated: November 2, 1976.

JOHN M. COULTER,
Acting Assistant Administrator
for DOD and Interagency
Affairs, National Aeronautics
and Space Administration.

[FR Doc.76-32922 Filed 11-8-76; 8:45 am]

[Notice 76-96]

PHYSICAL SCIENCES COMMITTEE OF THE SPACE PROGRAM ADVISORY COUNCIL Meeting

The Physical Sciences Committee of the NASA Space Program Advisory Council will meet on December 2-3, 1976

at the National Aeronautics and Space Administration. The meeting will be held in Room 5026 of Federal Office Building 6, located at 400 Maryland Avenue, S.W., Washington, D.C. 20546, from 9 a.m. until 5 p.m. on both days. Members of the public will be admitted to the meeting beginning at 9 a.m. on a first come, first served basis to within the 40 seat capacity of the room. Visitors will be requested to sign a visitor's register.

The Physical Sciences Committee serves only in an advisory capacity to NASA. The Committee is concerned with all aspects of the physical sciences which are relevant to the space program, including lunar and planetary exploration, astronomy and space physics.

The Committee presently has 16 members, including the Chairman, Dr. George B. Field. For further information regarding the meeting, please contact Dr. Sabatino Sofia, Area Code 202/755-8493. The agenda for the meeting is as follows:

DECEMBER 2, 1976

Time	Topic
9 a.m.-----	Opening remarks. This time is provided for the Chairman's introductory remarks, bringing to the attention of the Committee members, issues of concern and interest, and for the Executive Secretary to cover administrative matters.
9:30 a.m.----	Deep space network (DSN). A status report will be given on the capability of the DSN for Saturn studies, followed by discussion.
10:30 a.m.---	Terrestrial bodies science (solar sailing and Halley rendezvous). Presentations will be made to the Committee regarding the capability of solar sailing, in particular as applicable to a possible Halley rendezvous mission, followed by discussion.
1:30 p.m.----	Viking science update. The latest scientific results of the Viking missions will be presented to the Committee, followed by discussion.
3 p.m.-----	Mars after Viking. A presentation will be made to the Committee regarding possible options for the exploration of Mars after Viking.
5 p.m.-----	Adjourn.

DECEMBER 3, 1976

9 a.m.-----	High energy astrophysics follow-on. The Office of Space Science will make a presentation to the Committee on the current planning of the High Energy Astrophysics Follow-on Program, followed by discussion of possible new start requests for FY 1978.
10:45 a.m.---	Out of the Elliptic (OOE) Planning Status. The Committee will be briefed on the planning activities of the OOE mission currently underway between NASA and the European Space Agency.

Time	Topic
11:30 a.m.---	Roles of the Physical Sciences Committee and the Space Science Board (SSB). Members of the PSC and one or more members of the SSB will discuss the role of the PSC relative to the role of the SSB.
1:30 p.m.---	National Space Science Data Center (NSSDC) presentation. The Committee will discuss the progress report of the NSSDC Ad Hoc Committee study.
2 p.m.---	Space telescope—Science Institute. The Committee will discuss the National Academy of Sciences report on the Space Telescope Institute.
2:30 p.m.---	Concluding discussion and writing session. The members of the Committee will use this period to conclude discussions and document recommendations.
5 p.m.---	Adjourn.

Dated: November 3, 1976.

JOHN M. COULTER,
Acting Assistant Administrator
for DOD and Interagency
Affairs.

[FR Doc.76-32923 Filed 11-8-76;8:45 am]

[Notice 76-95]

SPACE SCIENCE STEERING COMMITTEE JUPITER ORBITER PROBE 1981 (JOP81) AD HOC ADVISORY SUBCOMMITTEE

Date and Place of Meeting

The Space Science Steering Committee, Jupiter Orbiter Probe 1981 (JOP81) Ad Hoc Advisory Subcommittee, will meet at the Goddard Space Flight Center, on December 15, 16, and 17, 1976. The meetings will be held in Building 26, Room 200 from 8:30 a.m. to 4:30 p.m. on December 15 and 16 and 8:30 a.m. to 12:00 p.m. on December 17, 1976. A second series of meetings of this group will be held on January 31 and February 1 and 2, 1977. The second session will be held at the same place from 8:30 a.m. to 4:30 p.m. on January 31 and February 1 and 8:30 a.m. to 2:00 p.m. on February 2, 1977.

The Subcommittee section will discuss, evaluate and categorize proposals for participation in scientific investigations to be performed on the Jupiter Orbiter Probe 1981 mission. Throughout the Subcommittee session the professional qualifications of the proposers, the merits of their proposed flight investigations and the associated instrumentation, and the potential scientific contribution of the proposers to the mission will be candidly discussed and appraised. Discussion of these matters in a public session would invade the privacy of the proposers and the other individuals involved. The meeting will be closed to members of the public.

Since the Subcommittee sessions will be concerned throughout with matters listed in 5 U.S.C. 552(b)(6), it has been

determined that the sessions should be closed to the public.

For further information, please contact Dr. M. A. Mitz at Area Code 202/755-3790.

Dated: November 3, 1976.

JOHN M. COULTER,
Acting Assistant Administrator
for DOD and Interagency
Affairs.

[FR Doc.76-32924 Filed 11-8-76;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR EARTH SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Earth Sciences.

Date and time: December 1 and 2, 1976—9 a.m. to 5 p.m. each day.

Place: Rooms 628, 642, and 643, National Science Foundation, 1800 G Street NW., Washington, D.C.

Type of meeting: Closed.

Contact person: Dr. Norman D. Watkins, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-4274.

Purpose of panel: To provide advice and recommendations concerning support for research in Earth Sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(B). Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and its thus subject to exemption (5) of the Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

NOVEMBER 4, 1976.

[FR Doc.76-32891 Filed 11-8-76;8:45 am]

ETHICS AND VALUES IN SCIENCE AND TECHNOLOGY

Meeting

A meeting of experts on ethics and values in science and technology will be

held from 5:30 p.m. on Friday, December 3, 1976 to 1 p.m. on Sunday, December 5, 1976 at the Sheraton Inn and International Conference Center, 11810 Sunrise Valley Drive, Reston, Virginia 22901.

The purpose of the meeting will be to discuss, develop and evaluate activities related to the clarification of ethical and value issues arising in the practice of science, technology, and medicine.

While this experts meeting is not considered to be a meeting of an "advisory committee" as that term is defined in Section 3 of the Federal Advisory Committee Act (P.L. 91-463), the meeting is believed to be of sufficient importance and interest to the general public to be announced in the FEDERAL REGISTER as a meeting open for public attendance.

The meeting will be chaired by Dr. William A. Blanpied, Program Manager of the EVIST Program. Members of the public who wish to attend this meeting should call (202) 282-7770 no later than November 29, 1976.

ALLEN M. SHINN, Jr.,
Acting Deputy Assistant,
Director for Science Education.

NOVEMBER 4, 1976.

[FR Doc.76-32890 Filed 11-8-76;8:45 am]

FEDERAL SCIENTIFIC AND TECHNICAL

Information Managers' Meeting

The next meeting of the Federal Scientific and Technical Information Managers will be held on Wednesday, November 10, 1976, from 9:30 a.m.-12 noon, at the Department of State, 21st and C Streets, NW, Conference Room 1105. The theme of this meeting will be the "Co-operative International Information Activities: What Directions for the Future?"

These meetings, sponsored by the National Science Foundation, provide a forum for the interchange of information concerning common problems and coordination in the areas of Federal scientific and technical information and communications.

These meetings are designed solely for the benefit of Federal employees and officers, and do not fall under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463). However, this meeting is believed to be of sufficient importance and interest to the public to be announced in the FEDERAL REGISTER.

Any persons wishing to attend this meeting or requiring further information should notify Mr. Andrew A. Aines, Division of Science Information, National Science Foundation, 1800 G Street, NW, Washington, DC 20550, telephone: (202) 632-5836.

MR. ANDREW A. AINES,
Senior Staff Associate,
Division of Science Information.

NOVEMBER 1, 1976.

[FR Doc.76-33138 Filed 11-8-76;11:16 am]

NATIONAL TRANSPORTATION POLICY STUDY COMMISSION OPEN MEETING

Pursuant to subsection 10(a) of the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a meeting of the National Transportation Policy Study Commission will be held November 19-20, 1976, at the Sheraton Inn International Conference Center, Reston, Virginia.

The Commission was established under section 154 of the Federal-Aid Highway Act of 1976 (Pub. L. 94-280; 90 Stat. 448-450) to report findings and recommendations with respect to the Nation's transportation needs, both national and regional, through the year 2000; the ability of our current transportation systems to meet anticipated needs; the proper mix of highway, rail, waterway, pipeline, and air transportation systems to meet anticipated needs; the energy requirements and availability of energy to meet anticipated needs; the existing policies and programs of the Federal Government which affect the development of our national transportation systems; and the new policies required to develop balanced national transportation systems which meet projected needs.

The agenda for the meeting will be devoted to organizational and administrative matters and receiving presentations on a proposed study plan.

The meeting will be open to the public. Individuals are welcome to attend to the extent of available space.

Dated: November 5, 1976.

BUD SHUSTER,
Chairman.

[FR Doc.76-33018 Filed 11-8-76; 8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 12957]

MUNICIPAL SECURITIES RULEMAKING BOARD

Order Giving Notice of Public Hearings; Designating Hearing Officers and Time, Date and Place for Hearings; and Establishing Certain Procedures Relating to the Participation of Interested Persons in Such Hearings

NOVEMBER 5, 1976.

In the matter of Municipal Securities Rulemaking Board, Suite 507, 1150 Connecticut Avenue, NW., Washington, D.C. 20036; (SR-MSRB-76-4).

The Securities and Exchange Commission today announced that it will conduct public hearings with respect to proposed Rules G-8, G-9 and G-10 filed by the Municipal Securities Rulemaking Board ("the Board") to establish recordkeeping and preservation requirements for municipal securities brokers and municipal securities dealers.

On October 27, 1976 in Securities Exchange Act Release No. 12933, ("Release No. 12933"), the Commission issued an

order instituting proceedings pursuant to Section 19(b)(2)(B) of the Securities Exchange Act of 1934 ("the Act") with respect to the Board's proposed recordkeeping and preservation requirements for municipal securities brokers and municipal securities dealers. In Release No. 12933, the Commission stated that the grounds upon which proceedings were instituted were as follows:

(1) By establishing a separate, comprehensive and detailed recordkeeping structure in addition to an existing and applicable recordkeeping structure, proposed Rule G-8 raises the issue of whether the Board's manner of exercise of its concurrent authority with respect to recordkeeping and preservation requirements imposes a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act as required by Section 19(b)(2), section 15B(b)(2)(C) and other applicable statutory standards.

(2) By establishing a recordkeeping structure with respect to a particular category of securities transactions in addition to an existing and generally applicable recordkeeping structure for one category of firms and proposed rules raise the issue of the possibility of duplicate or unequal regulation of firms engaged in municipal securities transactions which may permit unfair discrimination between municipal securities brokers and municipal securities dealers in contravention of the standards set forth in Section 15B(b)(2)(C) of the Act.

The Commission noted that additional matters for consideration during the proceedings would include:

(a) The desirability of the Board adopting generic recordkeeping rules in language comparable to that of existing recordkeeping rules; and

(b) The appropriateness of applying a single uniform recordkeeping standard to: registered brokers and dealers conducting a general securities business as well as effecting transactions in municipal securities; registered brokers and dealers effecting transactions solely in municipal securities; and registered municipal securities dealers which are banks or separately identifiable departments or divisions of banks.

The Commission also stated that it would consider pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation,¹ and that it would attempt to schedule hearings during the first two weeks of November. Due to the comprehensiveness and complexity of the issues to be considered, the Commission has determined that a longer period of time is required in order to allow adequate preparation of oral presentations. It is therefore ordered, pursuant to the provisions of section 19(b)(2) of the Act and Rule 19b-4 thereunder, Sections 21(a), 21(b) and 22 of the Act and Rule 6(c) of the Commission's Rules of Practice, that such hearings shall commence at 10:00 a.m. on November 22, 1976 in Room 876 at the Securities and Exchange Commission, 500 North Capitol Street,

Washington, D.C. 20549, and continue thereafter at such times and places as may be designated by the hearing officer.

Section 19(b)(2) would give the SEC sufficient notice and provide an opportunity for interested persons to participate in the process of reviewing a proposed change in self-regulatory organization's rules. In addition, this section would require that all comments and all correspondence between the SEC and the self-regulatory agency concerning the proposal be available for public inspection. Section 19(b)(2) would give the SEC sufficient flexibility to fashion a proceeding appropriate to the particular self-regulatory proposal being considered. In many, perhaps most, situations, notice and opportunity for written comment would be sufficient and there would undoubtedly be few, if any, comments. In cases in which fundamental policy issues are involved, however, oral hearings or publicly announced conferences might be most appropriate. Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

It is further ordered that for the purpose of the hearings Lee A. Pickard, Director, Nelson S. Kibler, Assistant Director, and Ann L. Vlcek, Branch Chief, Division of Market Regulation, be and hereby are designated hearing officers to preside over such hearings and to perform all duties in connection therewith as prescribed by law.

It is further ordered that any interested person who wishes to appear and give an oral presentation of his views at the hearing may do so at the sole direction of said officers based on the relevance and materiality of the presentation and on the similarity of presentations already made or scheduled to be made. Any interested person who wishes to make such a presentation: (i) shall contact Daniel J. Piliero II, Counsel for the Investigatory Proceeding, Marshall H. Lichtenstein, Maureen J. Smith or Lawrence Casey, Associate Counsel for the Investigatory Proceeding, at (202) 755-1390 before November 15, 1976; (ii) shall submit twenty-five (25) copies of the written text of his prepared statement to said counsel no later than four (4) business days prior to such person's scheduled appearance; (iii) shall generally be limited to a twenty minute prepared statement; and (iv) shall be prepared to respond to inquiries from the Commission and its staff. In advance of or during the hearings, any person may submit written questions to be directed to a particular witness or group of witnesses, but the presiding hearing officer will determine in his sole discretion whether and to what extent to direct those questions to any witness.

A list of witnesses, setting forth the time scheduled for their appearances, will be published in the SEC News Digest.

By the Commission,

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-39112 Filed 11-8-76; 9:36 am]

SMALL BUSINESS ADMINISTRATION

[License No. 09/12-0079; 09/12-0075]

BRYAN CAPITAL, INC. AND EDVESTCO, INC.

Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Bryan Capital, Inc., 235 Montgomery Street, Suite 2220, San Francisco, California 94104, and Edvestco, Incorporated, 150 Isabella Avenue, Atherton, California 94025, both have filed with the Small Business Administration an application pursuant to Section 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1976)), for approval of a conflict of interest transaction.

Bryan and Edvestco will each invest \$100,000 in B&J Development Company, 235 Montgomery Street, Suite 1107, San Francisco, California 94104. For this investment each licensee would receive about 20 percent of the profits of B&J (a limited partnership). The transaction falls within the purview of Section 107.1004 of the Regulations and requires prior written approval by SBA because each licensee is a limited partner of Beim & James (the same address as B&J Development Company), a California limited partnership. Beim & James is the parent of B&J Development Company.

Notice is hereby given that any person may, not later than November 24, 1976, submit to SBA in writing, comments on the proposed transaction. Any such comments should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW, Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in San Francisco, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 1, 1976.

PETER F. MCNEISH,
Deputy Associate
Administrator for Investment.

[FR Doc. 76-32818 Filed 11-8-76; 8:45 am]

[License No. 01/01-0284]

FIRST UNITED SMALL BUSINESS INVESTMENT COMPANY, INC.

Issuance of License To Operate as a Small Business Investment Company

On September 17, 1976, a notice was published in the FEDERAL REGISTER (41 FR 40239) stating that First United Small Business Investment Company, Inc., 135 Will Drive, Canton Massachusetts 02021, had filed an application with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1976) for a license to operate as a small business investment company.

Interested parties were given until the close of business on October 4, 1976, to

submit written comments on the Application to SBA.

Notice is hereby given that no written comments were received and having considered the application and all other pertinent information, SBA approved the issuance of License No. 01/01-0284 on October 29, 1976, to First United Small Business Investment Company, Inc., pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: October 29, 1976.

PETER F. MCNEISH,
Deputy Associate
Administrator for Investment.

[FR Doc. 76-32819 Filed 11-8-76; 8:45 am]

[Proposed License No. 02/02-0321]

IRVING SMALL BUSINESS INVESTMENT COMPANY, INC.

Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1976)) under the name of Irving Small Business Investment Company, Inc., One Wall Street, New York City, New York 10005, for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (the Act), and the rules and regulations promulgated thereunder.

The proposed officers, directors and shareholders are as follows:

Name	Title
Joseph Morse, Indian Hill Road, Bedford, New York 10506.	President, director.
Gerald Peretsman, 55 Train Drive, Great Neck, New York 11021.	Vice president.
Stephen A. Swartz, The Hook Road, Bedford, New York 10506.	Secretary.
William F. Graff, 56 Lakeside, Ramsey, New Jersey 07446.	Chairman and director.
William R. Hamcke, 44 Lawrence Hill Road, Stamford, Connecticut 06903.	Director.
Edwin A. Schoenborn, 29 Pleasant Manor, Thornwood, New York 10594.	Do.
Irving Trust Company, One Wall Street, New York, New York 10015.	Parent company—100% owner.

The company proposes to commence operations with a minimum capitalization of \$150,000, provided by Irving Trust Company (Irving Trust) and will further be increased to \$500,000, not more than six months after licensing, and by additional injections of capital by Irving Trust to bring total capitalization to \$9,000,000 six years from the date of licensing. Applicant proposes to finance small concerns primarily in the State of New York and in other areas

within the United States of America, its territories and possessions.

Matters involved in SBA's consideration of the application include the general business reputation of the owner and management, and the probability of successful operations of the new company, in accordance with the Act and regulations.

Notice is further given that any person may, not later than November 24, 1976, submit to SBA, in writing, relevant comments on the proposed licensing of this company. Any such communications should be addressed to: Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW, Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 1, 1976.

PETER F. MCNEISH,
Deputy Associate
Administrator for Investment.

[FR Doc. 76-32817 Filed 11-8-76; 8:45 am]

DEPARTMENT OF STATE

[CM-6/124]

STUDY GROUPS 3 AND 4 OF THE U.S. NATIONAL COMMITTEE FOR THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Meeting

The Department of State announces that Study Groups 3 and 4 of the U.S. National Committee for the International Telegraph and Telephone Consultative Committee (CCITT) will hold a joint meeting November 30, 1976, at 10 a.m. in Room 1406, Department of State, 2201 C Street, NW., Washington, D.C.

Study Groups 3 and 4 are responsible for preparing U.S. Government and industry contributions to those international CCITT Study Groups studying aspects of telegraph and telephone operations which are not of a regulatory nature.

The purpose of the meeting on November 30 will be to discuss actions taken by the Vith Plenary Assembly of the CCITT, which was held in Geneva, Switzerland, September 27-October 8, 1976, and to consider work to be undertaken as a result thereof by Study Groups 3 and 4 during the Plenary Period 1977-1980.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is therefore requested that prior to November 25, 1976, members of the general public who plan to attend the meeting inform Mr. Arthur L. Freeman, Office of International Communications Policy, Department of State, telephone (202) 632-1007, of their intention. All non-

Government attendees must use the C Street entrance to the building.

Dated: October 26, 1976.

ARTHUR L. FREEMAN,
Chairman, U.S. National Committee.
[FR Doc.76-33041 Filed 11-8-76;8:45 am]

DEPARTMENT OF THE TREASURY

Customs Service

[T. D. 76-308]

REIMBURSABLE SERVICES

Excess Cost of Preclearance Operations

NOVEMBER 2, 1976.

Notice is hereby given that pursuant to § 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning November 21, 1976.

Installation	Biweekly excess cost
Montreal, Canada	\$12,741.00
Toronto, Canada	21,080.00
Kindley Field, Bermuda	5,389.00
Nassau, Bahama Islands	13,345.00
Vancouver, Canada	6,850.00
Winnipeg, Canada	1,203.00

JOHN A. HURLEY,
Assistant Commissioner of
Customs (Administration).

[FR Doc.76-32935 Filed 11-8-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 184]

ASSIGNMENT OF HEARINGS

NOVEMBER 4, 1976.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 123407 (Sub 284), Sawyer Transport, Inc. now being assigned January 11, 1977 (1 day) at Seattle, Washington in a hearing room to be later designated.
MC 141867 (Sub 1), Specialized Trucking Service, Inc. now being assigned January 12, 1977 (3 days) at Seattle, Washington in a hearing room to be later designated.

MC 129032 (Sub 21), Tom Inman Trucking, Inc. now being assigned January 17, 1977 (1 week) at Seattle, Washington in a hearing room to be later designated.

MC 121607 (Sub 8), Columbia-Pacific Transport Co.-Crane Division now being assigned January 24, 1977 (1 week) at Seattle, Washington in a hearing room to be later designated.

MC 133095 (Sub 99), Texas Continental Express, Inc. now being transferred to Modified Procedure.

MC 142012, Osborne West Limited now being assigned January 17, 1977 (2 weeks) at San Francisco, California in a hearing room to be later designated.

MC 141969 (Sub 1), Noble Transport, Inc. now being assigned January 14, 1977 (1 day) at San Francisco, California in a hearing room to be later designated.

MC 134068 (Sub 28), Kodiak Refrigerated Lines, Inc. now being assigned January 13, 1977 (1 day) at San Francisco, California in a hearing room to be later designated.

MC-C 9129, Carolina Coach Company v. Coastal Plain Charter Service, Inc. now being assigned December 20, 1976 at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC-C-9082, Transcon Lines, A Corporation—Investigation and Revocation of Certificates, now assigned November 9, 1976 at Washington, D.C., is cancelled.

AB 19 (Sub 10), Buffalo, Rochester and Pittsburgh Railway Company and Baltimore and Ohio Railroad Company Abandonment Portion Indiana Branch at Black Lick Junction, In Indiana County, Pennsylvania now being assigned December 8, 1976 (2 days) at Indiana, Pennsylvania in a hearing room to be later designated.

MC-C 9081, Miami Transfer Co., Inc.—Investigation and Revocation of Certificate of Registration now assigned December 1, 1976 at Tallahassee, Florida is now being cancelled.

MC 125674 (Sub-No. 12), The Sentinel Star Express Company, d/b/a Jack Rabbit Express, now being assigned continued hearing January 11, 1977 (3 days) in Orlando, Florida; in the Kahler Plaza (The French Room) 151 East Washington Street.

MC 51146 (Sub-No. 464), Schneider Transport, Inc., now assigned November 30, 1976 at Chicago, Illinois; will be held in Room 349, 230 South Dearborn Street, instead of Room 349, Everett McKinley Dirksen Building.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-32966 Filed 11-8-76;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 4, 1976.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before November 24, 1976.

FSA Nos. 43263—Sand, Gravel and Crushed Stone Between Points in Southern Territory. Filed by M. B. Hart, Jr., Agent, (No. A6347), for interested rail carriers. Rates on sand, gravel, stone and related articles, in open top cars, as described in the application, between points in southern territory.

Grounds for relief—Short-line distance formula and grouping; rate relationship.

Tariff—Supplement 101 to Southern Freight Association, Agent, tariff 388-L, I.C.C. No. S-1188. Rates are published to become effective on December 16, 1976.

FSA No. 43264—Paper and Paper Articles from Neenah, Wisconsin. Filed by Southwestern Freight Bureau, Agent, (No. B-636), for interested rail carriers. Rates on paper and paper articles, in carloads, as described in the application, from Neenah, Wisconsin, to points in southwestern territory.

Grounds for relief—Market competition.

Tariff—Supplement 17 to Southwestern Freight Bureau, Agent, tariff 281-J, I.C.C. No. 5231. Rates are published to become effective on December 7, 1976.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-32965 Filed 11-8-76;8:45 am]

[Notice No. 62]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 9, 1976.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under section 212a(b) in connection with transfer application under section 212a(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-76713. By application filed November 1, 1976, POTTER/B & C TRANSFER, 8146 Byron Road, Whittier, CA 90607, seeks temporary authority to transfer the operating rights of FRED V. MURPHY, an individual, d.b.a. RED BALL TRANSFER & STORAGE CO., 4720½ Vineland Avenue, North Hollywood, CA 63080, under section 210a(b). The transfer to POTTER/B & C TRANSFER, of the operating rights of FRED V. MURPHY, an individual, d.b.a. RED BALL TRANSFER & STORAGE CO., is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-32964 Filed 11-8-76;8:45 am]

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TUESDAY, NOVEMBER 9, 1976



PART II:

**DEPARTMENT OF
HEALTH,
EDUCATION, AND
WELFARE**

Social Security Administration

■

MEDICARE PROGRAM

**Principles of Reimbursement for Cost-Basis
and Risk-Basis Health Maintenance
Organizations**

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regs. No. 5, Further Amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED (1965)

Principles of Reimbursement for Cost-Basis and Risk-Basis Health Maintenance Organizations

On July 29, 1975, two separate notices of proposed rulemaking (40 FR 31795 and 40 FR 31802) were published in the FEDERAL REGISTER with proposed amendments to Regulations No. 5 (20 CFR Part 405) regarding the principles of reimbursement for cost-basis and risk-basis health maintenance organizations (HMO's) respectively, under the Medicare program (title XVIII of the Social Security Act). These proposed amendments were issued under the provisions of section 1876 of the Social Security Act (42 U.S.C. 1395mm), which was added to title XVIII by section 226 of Pub. L. 92-603. Section 1876 of the Social Security Act provides for two methods of reimbursement to HMO's for covered services furnished to enrollees who are Medicare beneficiaries—reasonable cost reimbursement and incentive reimbursement. Section 1876(i)(2)(B) provides for reimbursement to HMO's on a reasonable-cost basis as defined in section 1861(v) of the Act. Generally, only those costs which are allowable in reimbursing providers under Medicare may be recognized as allowable costs for HMO's. However, certain other costs unique to the HMO form of delivering health care are also allowable if they are proper and necessary to HMO plan operations. Section 1876(a)(3)(A) provides for risk-basis HMO's to share in savings (up to prescribed limits) when the HMO provides covered services to its enrollees who are Medicare beneficiaries at a cost that is less than the adjusted average per capita cost (AAPCC). The AAPCC is the average cost of providing such services in the HMO's enrollment area to Medicare beneficiaries who are not enrolled in the HMO, with appropriate actuarial adjustment to reflect the makeup of the HMO's enrollment of Medicare beneficiaries. If the incurred costs of a risk-basis HMO exceeds the AAPCC, the HMO is required to absorb costs in excess of the AAPCC. Such losses may be carried forward and offset against savings earned in subsequent years. The amendments to the regulations prescribe no increase in Medicare benefits and result in no additional costs to the beneficiary or the program. Indeed, to the extent that HMO participation in the Medicare program is accomplished, program benefit costs may be lowered, since there is evidence that HMO's can deliver health care at a lower cost than the cost for health care delivered under the traditional patterns of separate entities providing institutional care and physician services. They do so primarily through lower hospital utilization

rates. Interested persons were given the opportunity to submit in writing on or before August 28, 1975, any data, views, or arguments on the notices of proposed rule making and proposed amendments. The comments and suggestions subsequently received and changes made in the amendments as proposed are discussed below. Since over a year has been spent in analyzing the comments and in developing the amendments to these regulations, further participation by the public under the Department's policies regarding the development of regulations does not appear warranted. The amendments as changed shall be effective on December 9, 1976.

Comments were received from a number of sources (including representatives of national, State, and local organizations) interested in the reimbursement principles for cost-basis and risk-basis HMO's under Medicare. All of the comments received on the proposed amendments have been carefully considered and comments which suggested clarification of terms and greater specificity of language were incorporated in the amendments wherever appropriate. Some suggested provisions could not be included in the amendments, because they are contrary to requirements of the statute. A number of comments regarding operational procedures will be taken into consideration when preparing instructions and guidelines. The most significant comments were the following:

1. *Certain Medicare reimbursement limitations that are separately applied to costs of providers of services, other health care facilities, and physicians' services should not be applied to the HMO setting which is an integrated health care delivery system.* Under the Medicare program, providers of services are subject to certain reimbursement limitations. For example, 20 CFR 405.460 authorizes the establishment of limitations on coverage of costs upon the publication of such limits in the FEDERAL REGISTER. Dollar limits on payment for hospital inpatient general routine services have been published in the FEDERAL REGISTER under this authority. In addition, 20 CFR 405.455 requires that payment by the health insurance program be made at the lesser of reasonable cost of services furnished or the customary charges made by the provider for the same services. Other limitations may be found in 20 CFR 405.432 (relating to reasonable cost of physical and other therapy services furnished under arrangements) and 20 CFR 405.433 (relating to the determination of allowable costs for drugs). Limitations have also been developed for costs of treatment for chronic renal disease (20 CFR 405.402(g) and 405.502(e)). The proposed amendments would impose these limitations on providers of services and certain other facilities owned or controlled by the HMO. Comments were received that these limitations on providers and other facilities owned or controlled by the HMO were not appropriate for HMO's since section 1876 of the Act recognizes,

for the first time, that an HMO is a unitary health care delivery system for reimbursement of both Part A and Part B services. The comments suggested that a payment limit be placed on the HMO's total cost, but not on the costs of individual components of the HMO's operations. In the case of the amendment providing for the lower of reasonable cost or customary charge limitation, the comment was received that the amendment does not take into account that providers related to the HMO are "no-charge structure" providers (i.e., typically, HMO members pay on the basis of a predetermined periodic rate and are not billed on a charge-per-service basis) and should be exempt from this cost limitation. The proposed amendments also provided that Medicare payment for physicians' services obtained by the HMO from a physician group that is organized on a group- or individual-practice basis and independent of the HMO could not exceed the amount that would be paid on a reasonable-charge basis, as described in Subpart E of 20 CFR Part 405 if the services had been provided to Medicare patients who were not HMO enrollees. Several comments reflected the view that a physician's compensation in the HMO setting bears no relationship to the fee-for-service reasonable charge approach, particularly where the amount paid to these physician groups is based on budgeted costs applicable to a projected membership and reduced to a per capita amount to facilitate periodic payments by the HMO to the physician group, and that the limitation would, therefore, be very difficult to apply in these cases.

The Social Security Act and legislative history make clear that the Secretary of Health, Education, and Welfare is expected to assure that allowable costs incurred by an HMO in providing and arranging for services for Medicare beneficiaries are not excessive and to establish guidelines as to the reasonableness of costs in certain areas. For example, section 1876(i)(3) limits the amount of payment by an HMO to a hospital to the reasonable cost of services (as determined under section 1861(v)), unless the HMO can demonstrate to the satisfaction of the Secretary that any excess payment is justified on the basis of advantages gained by the HMO. The Secretary is also expected to establish reasonable limits on the amount of reimbursement paid by HMO's to health practitioners. (See section 1876(a)(3)(C)(iv) of the Act.) The proposed amendments have been revised, however, to permit certain health insurance program cost limitations (See § 405.2042(b)(14)) to apply indirectly with respect to providers and other health care facilities owned or operated by a risk-basis HMO or related to a risk-basis HMO by common ownership or control. This will be done through the application of the AAPCC. The AAPCC, which is an absolute reimbursement ceiling for risk-basis HMO's, is based on health insurance program reimbursement in the HMO's geographic area for services provided in other way

than through the HMO, and the effects of these various reimbursement limitations on health insurance program reimbursement are reflected in the AAPCC. However, these limits must be applied directly to providers and other health care facilities owned or operated by a cost-basis HMO or related to the cost-basis HMO by common ownership or control, since cost-basis HMO's are not limited to the AAPCC as an absolute reimbursement ceiling and since section 1876(i)(2)(B) provides that reimbursement to a cost-basis HMO shall be made on the basis of reasonable cost as defined in section 1861(v). Since providers owned or operated by HMO's are "no-charge structure" providers with respect to HMO enrollees, the proposed amendments have also been revised to recognize that the limitation of reimbursement to the lower of reasonable cost or customary charges (§ 405.2042(b)(14)(ii)) is not applicable for services furnished to an HMO's enrollees who are Medicare beneficiaries by providers owned or operated by a cost-basis or risk-basis HMO, or related to such an HMO by common ownership or control. In the case of the reasonable charges limitation in Subpart E of 20 CFR Part 405, the amendments (see § 405.2042(g)(2)) have been revised to apply the limitation only where the covered Part B services of physicians and suppliers of services are paid for by the HMO on a fee-for-service basis, or where the services are provided by a group of physicians organized on an individual-practice basis that pays its physicians on a fee-for-service basis. The amendments (see § 405.2042(g)(3)) provide for an exception to the reasonable charges limitation in such a case if the physician group has an agreement that includes acceptance by the members of the physician group of effective incentives, such as risk-sharing or other financial incentives, designed to avoid unnecessary or unduly costly utilization of health services. In such cases, the amount paid by the HMO for the physicians' services is an allowable expense to the extent that it is reasonable. Different tests of reasonableness shall be applied where physicians' services are furnished by physician groups independent of the HMO which are organized on a group-practice basis.

2. *Costs incurred by the HMO solely for Medicare program purposes should be reimbursed in full by the program rather than allocating only a portion of such costs to Medicare.* Comments were received that the costs of an independently certified financial statement of the HMO's per capita incurred cost, required by section 1876(a)(3)(C)(i) of the Act, and the cost of reporting individual title XVIII beneficiary enrollment accretion and deletion data to SSA will result in expenses to the HMO not otherwise required for plan operations, and that these costs should be reimbursed in full by the program. Accordingly, the amendments have been revised to provide reimbursement in full by the health insurance program for the total reasonable cost incurred for these services, which are unique to HMO operations under Medi-

care's HMO provision, and are solely for the purposes of the Medicare program. However, with respect to the certified financial statement, only those additional costs incurred by the HMO that are related to the certification of the HMO's cost report are reimbursed in full by the Medicare program. The normal administrative costs incurred by the HMO in preparing its cost report, as well as other administrative costs (other than reporting enrollment information), are apportioned to the health insurance program so that the program pays its proportionate share of such costs. This is the same way in which such costs are treated in the provider setting.

3. *The amendments should provide for payment for long-range capital needs to place Medicare payment on a par with what is paid by enrollees who are not Medicare beneficiaries.* The reasons given for this suggested change were that a properly financed HMO requires funds to meet its long-range capital financing requirements. The Department of Health, Education, and Welfare recognized that HMO's, like hospitals and other health care providers, have long-range capital financing objectives. However, the Social Security Act does not provide for such a payment to be made by the health insurance program. Section 1876(i)(2)(B) of the Act provides that reimbursement to cost-basis HMO's for covered services delivered to Medicare beneficiaries shall be made on the basis of reasonable cost as defined in section 1861(v), i.e., the "cost actually incurred" in the efficient delivery of needed health services. For risk-basis HMO's, section 1876(a)(3)(A)(i) provides that the HMO's per capita "incurred cost" is to be compared with the AAPCC to determine whether a saving or loss has resulted for the contract period. An amount set aside by an HMO for long-range capital financing purposes is not an incurred cost to the HMO and, therefore, not an allowable cost for Medicare reimbursement purposes. Moreover, Medicare principles of reimbursement for providers of services, which the Congress contemplated would be followed in establishing the HMO reimbursement principles, do not recognize the cost of long-range capital financing as an allowable cost to the Medicare program. Medicare does pay its proportionate share of allowable expenses actually incurred in acquiring buildings and equipment used to provide covered services to Medicare beneficiaries, and these expenses are also recognized as allowable HMO expenses by these amendments. Attention is invited to 20 CFR 405.415(e), which discusses funding of depreciation. Section 1876 of the Act provides that HMO's may contract on an incentive basis and earn a savings payment if its Medicare costs are less than Medicare costs in the area. This incentive payment could be used by the HMO for future capital or other purposes. The recently published "Actuarial Note No. 88," U.S. Department of Health, Education, and Welfare, Social Security Administration, "A Retrospective Application of the Health Maintenance Organi-

zation Risk Sharing Savings Formula for Six Group Practice Prepayment Plans for 1969 and 1970", suggests that five of six large, well established plans surveyed would have earned the maximum savings payment under section 1876 of the Act based on 1969 and 1970 health insurance program data. The note points out that it may not be reasonable, however, to expect the same savings experience for other HMO's, i.e., small or developing HMO's or other large HMO's using different enrollment practices. (Copies of this publication may be obtained by writing to Office of the Actuary, SSA, Administrative Officer, 6401 Security Boulevard, Baltimore, Maryland 21235.)

4. *The amendments should provide that physicians' services furnished an HMO under arrangements be apportioned on the basis of services actually furnished enrollees who are Medicare beneficiaries even if payment is on an average per capita basis, and that all general and administrative costs should be apportioned on the basis of services actually furnished such enrollees instead of on a per capita basis, since most general and administrative costs are service-related.* The comment was made that most HMO's which pay physician groups on a per capita basis pay the same rate regardless of the age of the individual enrollee. In determining the capitation, however, consideration is given to the age, sex, and other characteristics of the total group of enrollees or anticipated enrollees and the amount and types of physicians' services they will require. Thus, the average per capita rate is a way of making payment by means of an aggregate fixed sum or other negotiated amount which is determined without regard to the frequency or extent of services furnished to any particular enrollee. Comments further suggest that payment on an average per capita basis should, therefore, be treated in the same manner as the aggregate fixed sum or other negotiated amount, i.e., the HMO's allowable cost for these services should be apportioned on the basis of the ratio of covered Medicare services to total services. The amendments have been revised to provide for apportionment of the costs of physicians' services in these cases on the basis of a ratio of covered Medicare services to total services (see § 405.2043(c)(2)(i)). On the provision concerning apportioning general and administrative costs, comments were received that all general and administrative costs should be apportioned on the basis of services rather than enrollment, since these costs are more service-related than enrollment-related. The amendments on apportioning general and administrative costs have been revised to allow for apportionment on the basis of a ratio of Medicare services to total services for general management and other administrative and general costs of the HMO plan that bear a significant relationship to providing services. However, the amendments provide for apportionment of enrollment, marketing, membership, and other administrative costs that bene-

fit the total enrolled population and are not directly associated with providing medical care on the basis of a ratio of Medicare enrollment to total enrollment.

5. For final settlement purposes, the Secretary should be bound within a specified, limited range to the estimated adjusted average per capita cost (AAPCC) computed at the beginning of the contract period. Comments received suggested that because the AAPCC computed at final settlement may be significantly different from the estimated AAPCC which the HMO may request at the beginning of its contract period, the estimated figure is of little value to the risk-basis HMO. Therefore, the amendments should provide for a specified percentage, e.g., 5 percent, as the maximum difference between the estimated and final AAPCC. After careful consideration, this suggestion was rejected because of legal and actuarial considerations. First, such a proposal appears to go beyond the provisions of section 1876 of the Act. The determination of the AAPCC as described in section 1876 includes a formula requiring a retrospective computation of the AAPCC at the end of the contract year with appropriate adjustments to assure actuarial equivalence. Under the proposed approach, however, the determination of the AAPCC at the time of final settlement would be limited to a 5 percent variation of the estimated AAPCC regardless of the HMO's actual experience. Therefore, the proposal would impose a limitation on the Social Security Administration in computing an AAPCC with appropriate adjustments to assure actuarial equivalence as required by statute. There is the additional problem of an individual HMO's enrollment experience during the contract year varying considerably from the enrollment forecast made at the beginning of the year by the HMO. Without a retroactive adjustment to the AAPCC, this variance could have a significant effect on reimbursement to the HMO which could, at times, be detrimental to the HMO.

6. The amendments should provide a longer time limit for HMO's to submit interim enrollment and cost reports and should further provide for a fixed time period in which final settlement must be made. Suggestions for two procedural changes were adopted. The time frame for submitting interim cost and enrollment reports was changed from 45 days to 60 days after the close of each quarter of the HMO's contract period to allow sufficient time for HMO's to assemble the necessary information to file these reports. Also, the amendments now require a tentative settlement with a risk-basis HMO to be made within 1 year after the submission of required reports, if final settlement has not been reached by that time, instead of the optional tentative settlement described in the proposed amendments.

Minor and technical changes have been made to Subparts D and E of 20 CFR Part 405 to provide cross-references to exceptions to Medicare reimbursement limitations applied to providers of serv-

ices and other health care facilities that are owned or operated by HMO's or related to HMO's by common ownership or control.

We intend to modify Subpart R of 20 CFR Part 405 to provide for the appeal rights of HMO's that disagree with the determination made by the Social Security Administration of the amount of reimbursement due the HMO.

The Department also plans to publish proposed amendments to the Code of Federal Regulations regarding the reimbursement applicable to prepayment organizations other than HMO's, such as group-practice prepayment plans, which provide (or arrange for the provision of) medical and other health services reimbursable under Part B of Medicare on a reasonable-cost basis under section 1833 (a) (1) (A) of the Act. Those amendments will be published under a Notice of Proposed Rule Making and, to the extent possible, will conform with the reimbursement amendments for cost-basis HMO's. Proposed amendments to the Code of Federal Regulations will also be published pertaining to reimbursement of prepayment plans other than HMO's that do not elect reasonable-cost payment under section 1833 (a) (1) (A) of the Act. These plans are reimbursed on a reasonable-charge basis.

The amendments announced under the notices of proposed rulemaking of July 29, 1975 (40 FR 31795 and 40 FR 31802) are, therefore, adopted with the changes noted and various editorial changes in the interest of clarity.

(Secs. 1102, 1861(v), 1871, and 1876 of the Social Security Act, 49 Stat. 647, as amended, 79 Stat. 313 as amended, 79 Stat. 331, and 86 Stat. 1396; 42 U.S.C. 1302, 1395x(v), 1395hh, and 1395mm.)

Effective date: These amendments shall be effective on December 9, 1976.

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance; No. 13.801, Health Insurance for the Aged—Supplementary Medical Insurance.)

Dated: September 1, 1976.

JAROLD A. KIEFFER,
Acting Commissioner of
Social Security.

Approved: November 1, 1976.

MARJORIE LYNCH,
Acting Secretary of Health,
Education, and Welfare.

Part 405 of Chapter III of Title 20 of the Code of Federal Regulations is amended as set forth below:

1. In § 405.402, paragraph (g) is revised to read as follows:

§ 405.402 Cost reimbursement; general.

(g) The Social Security Administration is authorized to issue temporary instructions modifying the provisions of this subpart to the extent it finds appropriate for cost reporting periods ending after June 30, 1973, in order to implement sections 201 (Coverage for Disability Beneficiaries Under Medicare) and 299I

(Chronic Renal Disease Considered to Constitute Disability) of Pub. L. 92-603. In so doing, rules may be developed for establishing limits on costs and services above which reimbursement shall be made only upon appropriate justification. For special rules concerning health maintenance organizations (HMO's) and providers of services and other health care facilities that are owned or operated by an HMO, or related to an HMO by common ownership or control, see §§ 405.2042(b) (14) and 405.2050(c).

2. In § 405.432, paragraph (f) (3) is added to read as follows:

§ 405.432 Reasonable cost of physical and other therapy services furnished under arrangements.

(f) * * *

(3) Exception for services furnished by risk-basis HMO providers. For special rules concerning services furnished to an HMO's enrollees who are title XVIII beneficiaries by a provider owned or operated by a risk-basis HMO (see § 405.2001(b)) or related to a risk-basis HMO by common ownership or control see § 405.2050(c).

3. In § 405.433, paragraph (c) is revised to read as follows:

§ 405.433 Determining allowable cost for drugs.

(c) Exceptions. The following exceptions may be granted but only upon the provider's demonstration that the conditions indicated are present:

(1) Exception because of medical necessity. Where a physician certifies that in his medical judgment a specific brand is medically necessary for a particular patient, the provisions of paragraph (b) (1) of this section shall not apply. However, the physician must certify in his own handwriting the medical necessity for the exception. An example of an acceptable statement would be "This brand is medically necessary—dispense as written." Merely checking a box on a form will not constitute an acceptable certification. The provider must retain such certification in its records.

(2) Exception for risk-basis HMO providers. For special rules concerning providers owned or operated by a risk-basis HMO, or related to a risk-basis HMO by common ownership or control, see § 405.2050(c).

4. In § 405.455, paragraph (a) is revised to read as follows:

§ 405.455 Amount of payments where customary charges for services furnished are less than reasonable cost.

(a) Principle. Providers of services will be paid the lesser of the reasonable cost of services furnished to beneficiaries or the customary charges made by the provider for the same services. Public providers of service rendering services free of charge or at a nominal charge will be paid fair compensation for services fur-

nished to beneficiaries. This principle is applicable to services rendered by providers in cost reporting periods beginning after December 31, 1973. For special rules concerning HMO's and providers of services and other health care facilities that are owned or operated by an HMO, or related to an HMO by common ownership or control, see §§ 405.2042(b)(14) and 405.2050(c).

5. In § 405.460, paragraph (f)(5) is added to read as follows:

§ 405.460 Limitations on coverage of costs.

(f) * * *

(5) *Exception for risk-basis HMO providers.* The limitation on costs imposed under this section shall not be applicable to services furnished to an HMO's enrollees who are title XVIII beneficiaries by a provider that is owned or operated by a risk-basis HMO or related to a risk-basis HMO by common ownership or control (see § 405.2050(c)). The exemption does not apply to services furnished to nonenrollees by an HMO-affiliated provider.

6. In § 405.502, paragraph (e) is revised to read as follows:

§ 405.502 Criteria for determining reasonable charges.

(e) *Criteria for determination of reasonable charges under the chronic renal disease program.* With respect to reimbursement for services in connection with renal dialysis and kidney transplantation, the normal medical market in which customary and prevailing charges can be determined will not be available; most such services will be reimbursed by the health insurance program. With respect to such services, therefore, reasonable charges may be defined in terms related to charges or costs prior to July 1, 1973, the costs and profits that are reasonable when the treatments are provided in an effective and economical manner, and/or charges made for other services, taking into account comparable physicians' time and skill requirements. Definitions may be developed which describe the elements of service included within the scope of a dialysis treatment and limits may be established on charges and services above which reimbursement shall be made only upon appropriate justification. For special rules concerning the reimbursement of chronic renal disease program services furnished by risk-basis health maintenance organizations (HMO's) or by facilities owned or operated by or related to such HMO's by common ownership or control see § 405.2050(c).

7. The table of sections for Subpart T is amended by adding the following numbers and headings:

PRINCIPLES OF REIMBURSEMENT FOR COST-BASIS HMO'S UNDER TITLE XVIII

Sec.	
405.2040	Reimbursement of cost-basis HMO's—introduction.
405.2041	Cost reimbursement—general.
405.2042	Allowable costs.
405.2043	Cost apportionment.
405.2044	Adequate financial records, statistical data, and cost finding.
405.2045	Interim per capita payments.
405.2046	Interim settlement.
405.2047	Final settlement.

PRINCIPLES OF REIMBURSEMENT FOR RISK-BASIS HMO'S UNDER TITLE XVIII

405.2049	Reimbursement of risk-basis HMO's—introduction.
405.2050	Determining adjusted incurred cost.
405.2051	Determining adjusted average per capita cost.
405.2052	Computation of the amount due to (or from) the HMO.
405.2053	Interim and tentative settlements.
405.2054	Final Settlement.

8. Subpart T is amended by adding §§ 405.2040–405.2047 and §§ 405.2049–405.2054, reading as follows:

PRINCIPLES OF REIMBURSEMENT FOR COST-BASIS HMO'S UNDER TITLE XVIII

§ 405.2040 Reimbursement of cost-basis HMO's—introduction.

(a) A developing HMO, or a mature HMO that elects to be reimbursed on a cost basis (see § 405.2001(b) for definitions of mature and developing HMO's), is paid the "reasonable cost" of the covered services it furnishes to its enrollees who are beneficiaries under title XVIII of the Act. The principles of reimbursement and guidelines to be used in determining the reasonable costs of such HMO's are set forth in §§ 405.2041 through 405.2047. Since the law contemplates that only those costs which are allowable under title XVIII of the Act generally may be recognized as allowable HMO costs, the principles and related policies in §§ 405.2041 through 405.2044 are based, in large part, on the principles of reimbursement for provider costs (see Subpart D of this part).

(b) The principles governing cost reimbursement to HMO's offer certain alternatives and options to HMO's in order to reflect the variation in operations among HMO's. For example, in § 405.2043(h) the principles applicable to developing HMO's allow time for those that do not already have the capability of reporting statistical and financial data by departments or functional service centers to meet this requirement. The principles governing cost reimbursement to HMO's also take into account the special nature of the HMO by recognizing costs of marketing, enrollment, and certain other costs that are unique to the HMO form of health care delivery.

§ 405.2041 Cost reimbursement—general.

(a) The costs incurred by the HMO in providing services covered under the hospital insurance program and supplementary medical insurance program are reimbursable if proper and necessary,

reasonable in amount, and appropriately apportioned among enrollees who are title XVIII beneficiaries, other enrollees, and nonenrolled patients of the HMO. Implicit in the intention that the amount paid be reasonable is the expectation that each HMO will seek to minimize the costs that it incurs in furnishing this care so that its actual costs will not exceed what a prudent and cost-conscious buyer would incur in furnishing such care.

(b) In formulating methods for making fair and equitable reimbursements to HMO's for services rendered to title XVIII beneficiaries who are enrolled in such organizations, the cost reimbursement principles set forth in paragraphs (a) and (b) of § 405.402 shall apply. In evaluating the reasonableness of costs, for a cost-basis HMO, the Social Security Administration (hereafter referred to as SSA) shall also take into account the HMO's per capita incurred costs for providing covered services to enrollees who are title XVIII beneficiaries in relation to the adjusted average per capita cost as described in section 1876(a)(3)(A)(iv) of the Act for the geographic area served by the HMO, or a similar area. In such cases, the adjusted average per capita cost shall be used as a general guideline to evaluate the reasonableness of HMO costs rather than a strict reimbursement limitation as is the case with risk-basis HMO's (see § 405.2051).

(c) SSA shall determine an interim per capita cost rate of payment in accordance with § 405.2045 which shall be paid to the HMO each month, in advance, for each title XVIII beneficiary enrolled with the HMO for which the health insurance program is responsible for making such a payment pursuant to this subpart. SSA shall adjust the interim per capita rate to the extent necessary, as provided in § 405.2045(c). Interim payments shall be subject to retroactive adjustment at the end of each contract period as provided in §§ 405.2046 and 405.2047. In determining the amount due the HMO, there shall be deducted from the reasonable cost actually incurred by the HMO, for covered services furnished title XVIII beneficiaries enrolled with the HMO, an amount equal to the actuarial value of the deductible and coinsurance amounts which would otherwise be applicable to the covered services for which payment is being made if the title XVIII beneficiaries who received the services had not been enrolled in the HMO.

(d) An HMO may elect to have providers of services that furnish covered services to enrollees who are title XVIII beneficiaries, obtain reimbursement directly from their health insurance program. The election, which is binding for the entire contract period, must be made in writing to SSA prior to the beginning of the contract period. When the HMO makes the election, the providers are each paid the reasonable cost of covered services they furnish enrollees of the organization in accordance with

principles of reimbursement for provider costs in Subpart D of this part and the amount of such reimbursement will not be included in payments made to the HMO.

§ 405.2042 Allowable costs.

(a) *General.* Allowable costs are those direct and indirect costs, including normal standby costs, which are incurred by the HMO and are proper and necessary to the efficient delivery by the HMO of needed health care. Such costs include those related to the care of beneficiaries under title XVIII, enrollment, membership, and similar costs that are proper and necessary to the HMO plan operations. The treatment of certain items of costs following, in essence, the principles of reimbursement for provider costs is discussed in paragraph (b) of this section. The treatment of other items of cost is described in paragraphs (c) through (i) of this section.

(b) *Provider cost reimbursement principles applicable to HMO's.* The types and items of cost generally incurred by providers of services that are allowable under the principles of reimbursement for provider costs (see Subpart D of this part), including the following items, are allowable when incurred by an HMO or by providers of services and other facilities owned or operated by the HMO through which covered care is furnished to the HMO's enrollees who are title XVIII beneficiaries, unless otherwise specified in this subpart:

(1) *Depreciation.* An appropriate allowance for depreciation on buildings and equipment is an allowable expense. The HMO shall follow the provisions of §§ 405.415, 405.417, and 405.418.

(2) *Interest expense.* Necessary and proper interest on both current and capital indebtedness is an allowable expense in accordance with § 405.419.

(3) *Bad debts.* Bad debts are deductions from revenue and are not to be included in allowable costs; however, bad debts attributable to deductible and coinsurance amounts for Part A and Part B covered services for which the beneficiary is liable in a contract period pursuant to § 405.2022(b) are reimbursable under the health insurance program in accordance with the provisions of § 405.420.

(i) When deductible and coinsurance amounts are paid by all or a portion of a monthly premium, or other periodic amount, the amount of allowable bad debts for an enrollee who is a title XVIII beneficiary for a contract period shall be limited to an amount not to exceed three times the monthly rate for the actuarial value of the deductible and coinsurance amounts, or its equivalent if the periodic charge or premium is payable on other than a monthly basis.

(ii) Any bad debt related to a service furnished to an enrollee of the HMO who is a title XVIII beneficiary and claimed on a cost report submitted for reimbursement under title XVIII of the Act by a provider of services, or other facility reimbursed on a cost basis, may not be claimed as a bad debt by the HMO.

(4) *Charity and courtesy allowances.* Charity and courtesy allowances are de-

ductions from revenue and are not to be included in allowable costs in accordance with § 405.420.

(5) *Cost of educational activities.* An appropriate part of the net cost of approved educational activities engaged in by a provider of services or other health care facility owned or operated by the HMO is an allowable cost in accordance with § 405.421.

(6) *Research costs.* Cost incurred for research purposes, over and above usual patient care, in accordance with § 405.422, are not includable in allowable costs of the HMO.

(7) *Grants, gifts, and income from endowments.* Grants, gifts, and income from endowments are treated in accordance with § 405.423.

(8) *Value of services of nonpaid workers.* The value of services of certain nonpaid workers is an allowable cost in accordance with § 405.424.

(9) *Purchase discounts and allowances and refunds of expenses.* Discounts and allowances received on purchases of goods and services are reductions of the HMO's costs to which they relate. Similarly, refunds of previous expense payments are reductions of the related expense in accordance with § 405.425.

(10) *Compensation of owners.* A reasonable allowance of compensation for services of owners is an allowable cost provided that the services are actually performed in a necessary function in accordance with § 405.426.

(11) *Cost to related organizations.* Costs applicable to services, facilities, and supplies furnished to the HMO by organizations related to the HMO by common ownership or control are includable in the allowable cost of the HMO at the cost to the related organization. However, such cost must not exceed the price of comparable services, facilities, or supplies which would be paid by a prudent buyer purchasing elsewhere. The provisions of § 405.427 are applicable to HMO's; however, in applying those provisions to HMO's, a provider of services, medical group, or other facility or supplier is not deemed a related organization solely because of a risk-sharing or incentive agreement with an HMO for reimbursement or compensation for services furnished HMO enrollees, or solely because substantially all services furnished by the provider or supplier are furnished enrollees of the HMO. However, such an economically dependent organization and the HMO shall be considered related if one of them clearly exercises significant management or ownership influence or control over the other.

(12) *Return on equity capital of proprietary providers owned by the HMO.* An allowance for a reasonable return on equity capital invested and used in the provision of patient care is allowable as an element of the reasonable cost of covered services furnished by a proprietary provider of services owned by an HMO in accordance with § 405.429.

(13) *Limitation on Federal participation for capital expenditures.* Section 1122 of the Social Security Act prohibits the use of Federal funds to support cer-

tain capital expenditures made by or on behalf of HMO's (or health care facilities) that are determined to be inconsistent with State or local health facility planning requirements. HMO's are subject to the provisions of section 1122 in accordance with the principles in §§ 405.402, 405.415, 405.419, 405.429, and 405.435.

(14) *Title XVIII limitations on reimbursement.* (i) Unless otherwise specified in this subpart, the reimbursement limitations imposed on the amounts payable to providers of services and other health care facilities under section 1861(v) of the Social Security Act apply to the amount payable by the health insurance program for covered services furnished by providers of services or other health care facilities that are owned or operated by a cost-basis HMO or are related to the cost-basis HMO by common ownership or control, and for services furnished by providers of services or other health care facilities that are reimbursed on a reasonable-cost basis. The reimbursement limitations applicable to cost-basis HMO's include, but are not necessarily limited to, the following:

(a) The cost of treatment for chronic renal disease (§ 405.402(g) and § 405.502(e));

(b) The limitation on coverage of costs set forth in § 405.460;

(c) The reasonable cost of physical and other therapy services furnished under arrangements (§ 405.432);

(d) The allowable cost for drugs under § 405.433.

(ii) The limitation on health insurance program payment to the lesser of the reasonable cost or customary charges for covered services (§ 405.455) does not apply with respect to services furnished to an HMO's enrollees who are title XVIII beneficiaries by a provider of services or other health care facility owned or operated by the HMO or related to the HMO by common ownership or control.

(c) *Enrollment and marketing costs—*
(1) *Principle.* Enrollment and marketing costs incurred in accordance with § 405.2023 are allowable costs. (See § 405.2043(f) and § 405.2044.)

(2) *Definition.* Allowable enrollment and marketing costs are those necessary and proper costs incurred in offering the HMO's plan to potential enrollees in accordance with this subpart. Such costs include selling, advertising, promotional, and other marketing costs and may not exceed an amount that would be incurred by a prudent and cost-conscious management.

(3) *Application.* Membership costs, described in paragraph (e) of this section, are not included in enrollment and marketing costs. Enrollment and marketing costs are allowable, whether incurred directly by HMO staff or under contract with marketing specialists or other outside consultants.

(4) *Enrollment and marketing costs reimbursement limitation.* The relatively higher costs that a developing HMO is likely to incur in offering its plan to title XVIII beneficiaries and that a mature HMO is likely to incur in initially offering its plan to title XVIII beneficiaries are

taken into account in determining whether enrollment and marketing costs are reasonable in amount. However, if such costs exceed amounts which would be paid by prudent HMO management, the excess shall not be allowed.

(d) *Reinsurance.* (1) The health insurance program's share of reasonable costs for reinsurance (i.e., protection against all or part of the financial risk that the HMO is obligated to assume under its subscriber agreement with enrollees who are title XVIII beneficiaries) is allowable to the extent that the HMO incurs reinsurance costs for:

(i) Covered emergency services (§ 405.2005(a)(3)(i)) furnished outside the HMO's service area (§ 405.2005(a)(1)), and

(ii) Covered urgently needed services (§ 405.2005(a)(3)(ii)) furnished outside the HMO's enrollment area (§ 405.2005(a)(1)), and

(iii) Other covered items and services furnished outside the HMO's enrollment area through arrangements (§ 405.2005(a)(2)).

(2) If the actual cost of reinsurance cannot be readily determined for the covered items or services, which are specified in paragraph (d)(1) of this section and are furnished to enrollees who are title XVIII beneficiaries, a reasonable estimate may be used.

(3) When the HMO's reinsurance covers only part of the cost of such covered services described in paragraph (d)(1) of this section, the share to be borne by the health insurance program for the cost of these covered services, including reinsurance cost and other payments, shall not exceed the amount that would otherwise be paid under this subpart. Other reinsurance costs are not allowable.

(e) *Membership costs.*—(1) *Principle.* Membership costs are allowable (see §§ 405.2043(f) and 405.2044(e) on cost apportionment and cost finding).

(2) *Definition.* Membership costs are allowable if incurred in maintaining and servicing subscriber contracts for prepayment enrollees. Membership costs include, but are not limited to: reasonable costs incurred in connection with maintaining statistical, financial, and other data on members.

(3) *Application.* For health insurance program purposes, membership costs shall not be included with allowable enrollment and marketing costs or with costs described in paragraph (i) of this section.

(f) *Physician compensation.*—(1) *Principle.* Compensation paid by an HMO to physicians is an allowable cost to the extent that such compensation is commensurate with the compensation paid for similar services performed by similar physicians practicing in the same or similar locality. To the extent such compensation cost is in excess of what is normally incurred, the excess is not an allowable cost.

(2) *Application.* Compensation for the personal services of physicians (i.e., salaries, wages, incentive payments, fringe benefits, etc.) shall be distinguished from

payments to physicians for nonpersonal services (i.e., expense attributable to facilities, equipment, support personnel, supplies, etc.) in determining whether compensation is allowable. Physicians influence the management of an HMO to a very significant degree, and, therefore, directly affect the costs of services and the financial status of an HMO. Their compensation may take various forms, but it is intended that the aggregate compensation allowable be reasonable in relation to the services personally rendered. Reasonableness of compensation may be determined by reference to, or in comparison with, compensation paid for comparable services and responsibilities.

(g) *Physicians' services under arrangements.* (1) The amount paid by an HMO to a physician group (organized on a group-practice or individual-practice basis) for physicians' services, and for other covered Part B services furnished under arrangements (as described in § 405.2006), shall be an allowable expense to the extent it is reasonable. (2) The amount paid by an HMO on a fee-for-service basis to physicians and other suppliers and to a physician group organized on an individual-practice basis for physicians' services and other covered Part B services furnished under arrangements (as described in § 405.2006) shall be an allowable expense to the extent it is not in excess of the reasonable charges, as defined in Subpart E of this part. Therefore, payment is limited to the amount that would otherwise be paid if the services were furnished by the physician group (or by similar physicians, practitioners, or suppliers) to title XVIII beneficiaries who are not enrolled in the HMO (exclusive of services furnished by group-practice prepayment plans electing cost reimbursement, and certain services furnished by, or under arrangements made by, a provider of services). The same limitation shall also apply to the amount paid by the HMO for such covered services furnished under arrangements with a physician, physician-directed clinic, or a supplier of services.

(3) However, an exception to the reasonable charges limitation described in paragraph (g)(2) of this section shall be permitted, if the HMO demonstrates to the satisfaction of SSA that the physician group organized on an individual-practice basis has an agreement that includes acceptance by the members of the physician group of effective incentives, such as risk-sharing or other financial incentives, designed to avoid unnecessary or unduly costly utilization of health services. In such cases, the amount of physician compensation paid by an HMO shall be an allowable expense to the extent it is reasonable.

(h) *Provider services through arrangements.* The cost incurred by an HMO for covered services furnished by a provider through arrangements (see §§ 405.2006 and 405.2043(b)) shall be allowable to the extent that such cost would be allowable and reimbursable pursuant to Subpart D of this part, unless

the HMO can demonstrate to the satisfaction of SSA that payment in excess of the reasonable cost allowed pursuant to such Subpart D of this part is justified on the basis of advantages gained by the HMO. For example, if an HMO has an arrangement with a provider of services located outside the HMO's enrollment area that is not related to the HMO by common ownership or control, payment for the provider's charges to the HMO for covered services (rather than the provider's reasonable cost as determined under Subpart D of this part) may be justified if: The provider furnishes services to enrollees of the HMO on an infrequent basis; the charges represent an insignificant amount of total reimbursement to the HMO by the program; and the charges do not exceed the customary charges by the provider to its other patients for similar services. The advantages gained under this arrangement include a more timely final settlement with the HMO and the elimination of administrative costs necessary to determine the provider's reasonable cost for these services. An advantage gained shall represent a real and tangible benefit received by the HMO for the excess cost incurred. Any such excess payment shall also be subject to other applicable requirements of this part 405, including tests of reasonableness.

(i) *Special title XVIII program requirements.* (1) The total reasonable cost incurred by an HMO for services specified in this paragraph, which are solely for the purposes of the health insurance program and unique to the health insurance program's HMO provision, shall be reimbursed in full by the program. However, in reimbursing for the cost specified in this paragraph for an independently certified cost report, only those additional costs incurred by an HMO that are related to the certification of the HMO's cost report are reimbursable in full by the program. The normal administrative costs incurred by the HMO in obtaining reimbursement from the health insurance program (such as the cost of maintaining and reporting statistical and actuarial data needed to determine the amount of reimbursement due the HMO and the cost of preparing cost reports) are apportioned to the health insurance program (see § 405.2043(f)). The reasonable cost of preparing independently certified financial statements for the HMO and the reasonable cost of other HMO management services are also apportioned in accordance with § 405.2043(f). Costs that are reimbursable in full under this paragraph shall be separately budgeted and approved in advance of the contract period. The following costs shall be reimbursed in full as specified in this paragraph.

(i) The reasonable cost of reporting individual title XVIII beneficiary enrollment accretion and deletion data; and

(ii) the reasonable cost incurred solely for the purposes of title XVIII for the HMO's independently certified cost report described in § 405.2047(b) for cost-basis HMO's and in § 405.2054(b) for risk-basis HMO's.

(2) The total reasonable cost of special data required from HMO's by the health insurance program solely for program evaluation and planning purposes shall be reimbursed in full by the program under the requirements of paragraph (1) of this section. Except as specifically provided for, paragraph (1) of this section shall not apply to data the HMO is required to maintain and furnish SSA under any other provision of this subpart.

§ 405.2043 Cost apportionment.

(a) *General.* Total allowable direct and indirect costs of an HMO shall be apportioned among title XVIII beneficiaries who are enrolled in the HMO, other enrollees, and any nonenrolled patients of the HMO. This apportionment shall be accomplished on the basis of requirements set forth in this section using methodologies approved by SSA. (See § 405.2042(i) for reimbursement of costs incurred in meeting special title XVIII program requirements.) The two basic objectives of this apportionment are that, to the extent reasonably possible, (1) the costs of efficiently delivering covered care to enrollees who are title XVIII beneficiaries will not be borne by other enrollees, and by any nonenrolled patients of the HMO, and (2) the costs of delivering care to enrollees other than enrollees who are title XVIII beneficiaries and any nonenrolled patients will not be borne by the health insurance program under section 1876 of the Act. (The HMO shall be reimbursed for covered services furnished to title XVIII beneficiaries not enrolled in the HMO through the HMO's health insurance program fiscal intermediary or carrier, as appropriate.)

(b) *Methods of apportionment for provider services—*(1) *Provider services furnished directly by the HMO.* The method of apportionment required by §§ 405.452, 405.453, and 405.480 shall be used to determine the share to be borne by the health insurance program for the cost of covered services furnished to enrollees who are title XVIII beneficiaries, directly by the HMO through a "provider of services" (as defined in § 405.401) which is owned or operated by the HMO, or related to the HMO by common ownership or control (see § 405.2044(c) for cost-finding requirements).

(2) *Provider services furnished by the HMO through arrangements with others.* The share to be borne by the health insurance program for covered services furnished to enrollees who are title XVIII beneficiaries, by the HMO through arrangements with a provider of services which is not owned or operated by the HMO, or related to the HMO by common ownership or control, shall be determined as follows:

(i) The share to be borne by the health insurance program for covered services furnished to enrollees who are title XVIII beneficiaries by the provider shall be based on the cost the HMO pays the provider, pursuant to its financial arrangement with the provider, to the extent it is reasonable and subject to conditions and limitations set forth in

§ 405.2042(a). The share to be borne by the health insurance program shall be determined on the same approved basis otherwise used by the provider in apportioning the health insurance program's share of allowable costs for covered services furnished title XVIII beneficiaries that are not enrollees of the HMO subject to conditions and limitations set forth in § 405.2042(h). In the event that apportionment on this basis, because of the special nature or terms of the HMO's financial arrangement with the provider, would result in the health insurance program's bearing the costs of delivering care to individuals other than enrollees who are title XVIII beneficiaries, the apportionment shall be on some other appropriate basis approved by SSA, intended to assure that the share allocated to the health insurance program does not include costs of delivering care to individuals other than enrollees who are title XVIII beneficiaries.

(ii) Where the HMO elects to have providers of services seek reimbursement from their health insurance program intermediary for covered services furnished to the HMO's enrollees who are title XVIII beneficiaries, the share to be borne by the health insurance program for covered services shall be the amount paid the provider pursuant to § 405.2041(d).

(3) *Emergency services; urgently needed services and out-of-area provider services for which the HMO assumes financial responsibility.* Providers of services may be reimbursed through their health insurance program intermediary for the reasonable cost of covered emergency services (as defined in § 405.2005(a)(3)(i)), urgently needed services (as defined in § 405.2005(a)(3)(ii)), and other covered out-of-area services for which the HMO assumes financial responsibility, except for services covered under reinsurance, the cost of which is allowable pursuant to § 405.2042(d), in accordance with Subpart D of this part. The amount of such reimbursement will not be included in payments made to the HMO. If an HMO pays the provider of services for emergency, urgently needed, and other covered out-of-area services, the cost incurred by the HMO shall be allowable and reimbursable under Subpart D of this part, unless the HMO can demonstrate to the satisfaction of SSA that payment in excess of the reasonable cost allowed under Subpart D of this part is justified on the basis of advantages gained by the HMO as described in § 405.2042(h).

(c) *Methods of apportionment of covered physicians' services and other covered Part B services which are not provider services—*(1) *Medical services furnished directly by the HMO.* The total allowable direct and indirect costs of covered physicians' services and other Part B services not furnished through a provider of services, but which the HMO furnishes directly through physicians and other health care personnel who are employees or partners of the HMO, or by a group of physicians or by

a health center or other facility which is related to the HMO by common control or ownership, shall be apportioned on the basis of the ratio of covered Part B services provided to enrollees who are title XVIII beneficiaries to total services furnished to all enrollees of the HMO and other patients on a departmental basis. The sum of the apportioned costs for each department furnishing covered services is the total share of the medical costs to be borne by the health insurance program (see example in paragraph (e) of this section for services furnished directly).

(2) *Medical services furnished under arrangements by the HMO.* The share to be borne by the health insurance program of the cost of covered physicians' services and other Part B services not furnished through a provider of services, but which the HMO furnishes to its enrollees who are title XVIII beneficiaries under arrangements such as with a group of physicians (organized on a group-practice or individual-practice basis) shall be determined as follows:

(i) The share to be borne by the health insurance program for covered Part B services furnished to the HMO's enrollees who are title XVIII beneficiaries under an arrangement whereby the HMO pays for the services on some basis other than fee-for-service shall be based on the cost the HMO pays, pursuant to its financial arrangement with the group of physicians or supplier, to the extent it is reasonable. The share to be borne by the health insurance program under this arrangement shall be determined on the basis of a ratio of the covered services furnished to the HMO's enrollees who are title XVIII beneficiaries to total services furnished to the HMO's enrollees and other patients covered by the payment, except where apportionment on this basis would result in the health insurance program's bearing the costs of delivering care to individuals who are not title XVIII beneficiaries. In that event, apportionment shall be on some other appropriate basis approved by SSA so that the share allocated to the health insurance program does not include costs of delivering care to individuals who are not title XVIII beneficiaries.

(ii) The share to be borne by the health insurance program for covered Part B services furnished by the HMO to its enrollees who are title XVIII beneficiaries under an arrangement whereby the HMO pays for the services on a fee-for-service basis shall be the charges pursuant to the terms of the agreement for these covered services provided these charges do not exceed the reasonable charge for the service, as defined in Subpart E of this part. However, an exception to this reasonable charges limitation is permitted a physician group organized on an individual-practice basis that meets the conditions set forth in § 405.2042(g)(3).

(3) *Emergency services, urgently needed services and other covered medical services for which the HMO assumes financial responsibility.* The share to be borne by the health insurance program for covered physicians' services and other

covered Part B services which are not furnished by a provider of services and are emergency services (as defined in § 405.2005(a)(3)(i)), urgently needed services (as defined in § 405.2005(a)(3)(ii)), or other covered services for which the HMO assumes financial responsibility, except for services covered under reinsurance, the cost of which is allowable pursuant to § 405.2042(d), shall be determined in accordance with paragraph (c)(2) of this section, unless payment of a greater amount is justified to the satisfaction of SSA. For example, payment of the charges of a physician or other Part B supplier rather than reasonable charge for the service as defined in Subpart E of this part may be justified if: the physician or other Part B supplier furnishes services to enrollees of the HMO on an infrequent basis; such charges represent an insignificant amount of total reimbursement to the HMO by the program; and such charges do not exceed the amounts charged by such physician or other Part B supplier to other patients for similar services.

(d) *Weighting for services of physicians and other health care personnel.*

(1) Since the direct professional services of physicians and other health care personnel vary in time and complexity from patient to patient, depending on the patient's condition and other factors, the HMO may weight for time and complexity the services that are used to compute the apportionment of costs for the direct professional services of physicians and other health care personnel pursuant to paragraph (c)(1) of this section provided such weighting is approved by SSA. The HMO may use statistics or reasonable estimates that are based on adequate data acceptable to SSA. However, services used in apportionment ratios for each department, i.e., services furnished title XVIII beneficiaries who are enrolled in the HMO, other enrollees, and non-member patients, must be weighted on the same basis to assure an equitable apportionment of costs.

(2) Such weighting shall be permitted, subject to the payment limitation set forth in § 405.2042(g), if applicable, in making reimbursement for the covered Part B professional services of physicians and other health care personnel furnished under arrangements where apportionment is on the basis of services, pursuant to paragraph (c)(2)(i) of this section, provided such weighting is based on statistics or adequate data acceptable to SSA and all services used in the apportionment ratio are weighted on the same basis. Where payment for such arranged-for services is on some other basis, time and complexity shall be recognized subject to the payment limitation in § 405.2042(g), if applicable, but only to the extent that they are specific and reasonable elements of the amount which the HMO, pursuant to the terms of the financial agreement with the group of physicians, has agreed to pay for such services.

(e) *Example.* The following example illustrates the apportionment of the cost of covered Part B services on a depart-

mentary basis. In the example, the following assumptions are made:

(1) There are no covered services furnished in the following departments: dental, optical, and social and community services;

Example: Apportionment of allowable cost of medical services furnished directly by the HMO

Department	Total allowable cost	Total services	Total covered services furnished enrollees who are title XVIII beneficiaries	Percent of covered services furnished enrollees who are title XVIII beneficiaries	Apportioned cost of covered services furnished to enrollees who are title XVIII beneficiaries (col. 5 x col. 2)
(1)	(2)	(3)	(4)	(5)	(6)
1. Primary care.....	\$750,000	100,000	27,000	27.00	\$202,500
2. Laboratory.....	120,000	75,000	10,000	13.33	15,996
3. X-ray.....	50,000	20,000	2,800	14.00	7,000
4. Mental health.....	100,000	12,000	1,000	8.33	8,330
5. Dental.....	200,000	20,000	0		
6. Optical.....	235,000	15,000	0		
7. Social and community.....	20,000	10,000	0		
Total.....	1,475,000				233,826

¹ Enrollees who are titled XVIII beneficiaries received 27,000 part B covered services. For the 100,000 total services furnished, the primary care department incurred \$750,000 total allowable costs. The following illustrates the apportionment of costs for the primary care department:

Ratio of total covered services furnished enrollees who are title XVIII beneficiaries in the primary care department to total services furnished all HMO enrollees and other patients in the primary care department:

$$\frac{27,000}{100,000} = 27.00 \text{ percent.}$$

The health insurance program's share of the primary care department's costs for part B covered services furnished title XVIII beneficiaries who are enrollees of the HMO: the total allowable costs incurred by the primary care department (\$750,000) x the ratio (27.00 percent) = \$202,500 (see line 1, column 6).

² Calculations not shown. See footnote 1 of this example for methodology.

(f) *Method of apportionment of administrative and general costs of the HMO plan.* (1) Enrollment, marketing, membership, and other administrative and general costs of the HMO plan that benefit the total enrolled population of the HMO and which are not directly associated with providing medical care shall be apportioned on the basis of a ratio of enrollment of title XVIII beneficiaries to the total HMO enrollment.

(2) General management and other administrative and general costs of the HMO plan that bear a significant relationship to services furnished by the HMO shall be included in the overall costs of the HMO. These costs shall be apportioned on the basis of the percentage of the HMO's total costs (excluding the general management and other administrative and general costs of the HMO plan to be apportioned) that have been apportioned to the health insurance program by acceptable methods of apportionment set forth in this section.

(g) *Example.* The following illustrates the apportionment of the general management and other administrative and general costs of the HMO plan that bear a substantial relationship to services furnished by the HMO (described in paragraph (f)(2) of this section). These costs are apportioned on the basis of a percentage of costs (excluding the general management and other administrative and general costs of the HMO plan to be apportioned) already apportioned to the health insurance program by acceptable apportionment methods. These acceptable apportionment methods are set forth

(2) Allocable indirect costs (e.g., medical records costs) and general and administrative costs.

(3) Unallowable costs have been excluded (e.g., research costs, unallowable costs related to capital expenditures (see § 405.2042(b)(13)));

(4) Statistical data are weighted for time and complexity.

in paragraphs (a) through (d) of this section for the HMO's health services delivery components (e.g., providers of services and components furnishing physicians' services) and in paragraph (f)(1) of this section for groupings of HMO plan expense (e.g., enrollment, marketing, membership, and other administrative and general expense) apportioned on the basis of enrollment. In the example, the following assumptions are made:

1. Medical service components—direct and indirect cost:	
Medical center A.....	\$1,475,000
Medical center B.....	1,500,000
Medical center C.....	1,525,000
	\$4,500,000
2. Provider of services components—direct and indirect cost.....	2,500,000
3. Enrollment, marketing, membership, and other administrative and general costs of the HMO plan (not directly associated with providing medical care) that benefit the total enrolled HMO population.....	300,000
4. General management and other administrative and general costs of the HMO plan.....	600,000
5. Total.....	\$7,900,000
6. Total enrollees.....	30,000
Enrollees who are title XVIII beneficiaries.....	3,000
Ratio of title XVIII to total enrollees (percent).....	10

7. Apportionment of provider services based on established stepdown and cost finding methods (percent) ----- 30
8. Statistical data meet the conditions for weighting set forth in paragraph (d) of this section -----
9. Allocable indirect costs (e.g., medical records) and administrative and general expense of the medical service components and

provider components have been distributed to the departments of these components by acceptable cost finding and allocation methods -----

10. Unallowable costs, including administrative and general costs applicable to such unallowable costs, such as research costs and unallowable costs related to capital expenditures (see § 405.2042(b) (13)), have been excluded -----

Apportionment of administrative and general costs of the HMO plan

HMO components and expense groupings	Total cost	Apportioned cost of covered services furnished HMO enrollees who are title XVIII beneficiaries	Percentage of HMO costs apportioned for covered services furnished HMO enrollees who are title XVIII beneficiaries
(1)	(2)	(3)	(4)
1. Medical center A -----	\$1,475,000	\$433,826	15.85
2. Medical center B -----	1,500,000	420,000	16.00
3. Medical center C -----	1,525,000	444,000	16.00
4. Subtotal -----	4,500,000	1,297,826	
5. Provider of services -----	2,500,000	750,000	30.00
6. Subtotal -----	7,000,000	2,047,826	
7. Enrollment, marketing, membership, and other administrative and general costs that benefit the total enrolled HMO population -----	300,000	80,000	10.00
8. Total -----	7,300,000	2,127,826	29.13
9. General management and other administrative and general costs -----	600,000	123,120	20.52
10. Total -----	7,900,000	2,250,946	

¹ Apportioned on the basis of the ratio of covered part B services provided to enrollees who are title XVIII beneficiaries to total services furnished to all enrollees of the HMO and nonenrollees on a departmental basis (see paragraphs (c) and (e) of this section).

² Apportioned by acceptable methods of apportionment set forth in subpart D of this part (see paragraph (b) of this section).

³ Apportioned on the basis of a ratio of enrollment of title XVIII beneficiaries to total HMO enrollment (see paragraph (f) (1) of this section).

⁴ Computed by dividing the sum of the apportioned cost of covered services furnished HMO enrollees who are title XVIII beneficiaries (\$1,497,826—line 8, column 3) by the HMO's total cost, except for management and other administrative and general costs (\$7,300,000—line 8, column 2).

⁵ Computed by applying the percentage of HMO costs apportioned for covered services furnished HMO enrollees who are title XVIII beneficiaries, as determined in line 8, column 4 (29.13 percent), to the management and other administrative and general costs in line 9, column 2 (\$600,000 times 20.52 percent = \$123,120) (see paragraph (f) (2) of this section).

(h) *Other methods of allocation and apportionment.* (1) A method of apportionment or basis for allocation of costs, other than the methods prescribed in this subpart, may be used provided such method results in a more accurate and equitable apportionment of allowable costs and is justifiable from an administrative and cost standpoint. An HMO that desires to use such an alternate method must submit its request to do so to SSA, in writing, at least 90 days prior to the beginning of the period to which the different method or basis of allocation is to be used. Once having obtained approval from SSA to use a different method or basis of allocation, the HMO may not revert to another method without first obtaining the approval of SSA.

(2) Where a developing HMO does not have the capability to collect the statistical and financial data required to apportion allowable costs pursuant to the requirements set forth in this section, it may, after first obtaining the approval of SSA, use another method for apportioning or allocating allowable costs. However, the HMO must present a plan which satisfies SSA that it will have the capability necessary to collect statistical

and financial data to apply the methods of apportionment required by this subpart within a reasonable period of time, not to exceed two contract periods after the expiration of the period of its initial contract with SSA.

§ 405.2044 Adequate financial records, statistical data, and cost finding.

(a) HMO's must maintain sufficient financial records and statistical data for proper determination of costs payable to the HMO pursuant to this subpart by the health insurance program for the covered services furnished by the HMO to its enrollees who are title XVIII beneficiaries, whether furnished directly by the HMO or under arrangements by the HMO with others. Unless otherwise provided for in this subpart, standardized definitions, accounting, statistics, and reporting practices which are widely accepted in the health care industry shall be followed.

(b) The HMO must provide adequate cost and statistical data, based on its financial and statistical records, which are capable of verification by qualified auditors. The cost data must be based on an approved method of cost finding and

on the accrual basis of accounting. However, where governmental institutions operate on a cash basis of accounting, cost data based on such basis of accounting will be acceptable, subject to appropriate treatment of capital expenditures.

(c) Where the services of providers of services are furnished directly by the HMO, the provider of services is subject to the cost-finding and cost-reporting requirements set forth in Subpart D of this part. An approved cost-finding method described in § 405.453 must be used to determine the actual cost of covered services furnished directly by the HMO during its reporting period.

(d) Where physicians' and other Part B medical services (not furnished by a provider of services) are furnished directly by the HMO, the statistical and financial data for such services shall be reported by departments (e.g., primary care, laboratory, X-ray). Statistics shall be furnished that indicate the frequency and type of service provided, in such form and detail as prescribed by SSA. Costs allocable to more than one department, such as medical records, shall be distributed to each such department in proportion to the benefits received by the department. Other general and administrative costs of a health services delivery component of the HMO which cannot be assigned to a specific department shall be allocated on the basis of costs already distributed or allocated to the department.

(e) Where physicians' and other Part B medical services (not furnished by a provider of services) are furnished by the HMO through arrangements, the HMO shall furnish statistical, financial, and other information with respect to such services in such form and detail as prescribed by SSA.

(f) Accurate and sufficient detail of incurred costs, enrollment, and statistical data shall be maintained in financial and other records and shall be reported in such form and detail as required by SSA. In the case of a separate organization or department that performs administrative services, such as centralized purchasing, accounting, data processing, etc., that benefit the HMO and the HMO's major functional components, such as a hospital, skilled nursing facility, or other activity owned by the HMO, these costs shall be allocated or distributed to each such component in reasonable proportion to the benefits received by the component. Other allocable administrative service costs that cannot otherwise be distributed shall be allocated on the basis of cost already distributed or allocated to the component (see § 405.2043(f)).

§ 405.2045 Interim per capita payments.

(a) *Principle of payment.* Each month SSA shall pay, in advance, to the HMO its interim per capita rate of payment for each individual enrolled in the HMO for whom the health insurance program is responsible for making such a payment pursuant to § 405.2021. Additional lump-sum payments may be made at other times during the contract period, at the discretion of SSA, to adjust the

total amounts paid during the contract period to the level of incurred costs.

(b) *Determination of rate.* The interim per capita rate of payment is equal to the estimated per capita cost of providing covered services to title XVIII beneficiaries enrolled in the HMO, based upon types and components of costs which are reimbursable pursuant to this Subpart. The interim per capita rate shall be determined annually by SSA on the basis of the HMO's annual operating and enrollment forecast (see paragraph (e) of this section) and may be revised during the contract period as explained in paragraph (c) of this section.

(c) *Adjustments of payments.* In order to maintain the interim payments at the level of current reasonable costs, SSA shall adjust the interim per capita rate, to the extent necessary, on the basis of adequate data supplied by the HMO in its interim estimated cost and enrollment reports or such other evidence that SSA may have that the rate based on actual costs is more or less than the current rate. Adjustments may also be made where there is:

(1) A change in the number of enrollees in the HMO who are title XVIII beneficiaries and the per capita cost rate is affected;

(2) A material variation from the costs estimated when the annual operating budget was prepared; or

(3) A significant change in the use of covered services by enrollees in the HMO who are title XVIII beneficiaries.

(d) *Reduction in payment.* SSA may reduce interim payments, to the extent appropriate, in the event that reports (and other data the HMO is required to submit pursuant to this subpart in order to determine the amount of payment to be made) are not furnished timely, or may take such other action as is authorized pursuant to this subpart. An interim payment reduction shall remain in effect until such time as a reasonable estimate of per capita costs can be made.

(e) *Budget and enrollment forecast.*

(1) The HMO shall submit an annual operating budget and enrollment forecast, in such form and detail as SSA may require, at least 90 days prior to the beginning of each contract period. Such forecast shall be based upon information and statistical data capable of verification where a detailed review of supporting records is required by SSA. Such information and data include, but are not limited to, all ledgers, books, records and original evidence of costs and statistical data which pertain to the determination of reasonable cost. (See also § 405.2023 (b) on the enrollment forecast.)

(2) Whenever the budget and enrollment forecast is not submitted on a timely basis, SSA may:

(i) Establish an interim per capita rate of payment (see paragraph (b) of this section) on the basis of the best available data and adjust payments based on such a rate until such time as the required reports are submitted and a new interim per capita rate can be established, or

(ii) Advise the HMO that interim payments will not be made until such time as the required reports are submitted if there is not sufficient data on which to establish an interim per capita rate of payment.

(f) *Interim cost and enrollment reports.* An HMO is required to submit interim cost reports and enrollment data on a quarterly basis in such form and manner as SSA may prescribe. The interim cost reports of a contract period shall be submitted not later than 60 days after the close of each quarter of the HMO's contract period.

§ 405.2046 Interim settlement.

(a) *Determination.* Within 30 days following the receipt of the required HMO reports, SSA shall make an interim determination of the estimated amount payable to the HMO for the reasonable cost of covered services furnished to its enrollees who are title XVIII beneficiaries during the contract period. Such determination shall be made on the basis of the interim cost reports (see § 405.2045 (f)), enrollment data submitted by the HMO, and such other relevant data as SSA finds appropriate. For this purpose, costs shall be accepted as reported, subject to later audit, unless there are obvious errors or inconsistencies.

(b) *Payment.* Any difference between the total amount of interim payments and the amount found payable on the basis of the interim determination, described in paragraph (a) of this section, shall be paid by such HMO or by SSA, whichever is appropriate, no later than 30 days after such determination.

§ 405.2047 Final settlement.

(a) *General.* Final settlement and payment of amounts due the HMO or the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund shall be made following the submission and review of an independently certified financial statement and supporting documents as described in paragraph (b) of this section.

(b) *Certified financial statement as basis for final settlement—*(1) *General.* The HMO shall submit to SSA an independently certified financial statement and supporting documents, in such form and detail as SSA may prescribe, no later than 180 days following the close of each contract period. Such statement shall include:

(i) The HMO's per capita incurred costs (based upon principles described in §§ 405.2040 through 405.2044) of providing covered services to its enrollees who are title XVIII beneficiaries during the contract period, including costs incurred by another organization related to the HMO by common ownership or control;

(ii) The HMO's methods of apportioning costs among enrollees who are title XVIII beneficiaries, enrollees who are not title XVIII beneficiaries, and others (nonenrollees receiving health care services on a fee-for-service or other basis), in accordance with reimbursement procedures required pursuant to this subpart

(and, as applicable, Subpart D of this part); and

(iii) Such information on enrollment and other data as SSA may require.

(2) *Failure to report required financial information.* Whenever an HMO does not submit the required financial statement and supporting documents within the time specified in paragraph (b) (1) of this section, except where the HMO has requested and received an extension of time for good cause shown, such failure to report such information may be deemed by SSA to constitute evidence of likely overpayment on the basis of which appropriate recovery of amounts previously paid or the reduction of interim payments may be made.

(c) *Final settlement.* (1) Final settlement consists of a determination by SSA, following the submission of acceptable reports specified in paragraph (b) of this section, of total reimbursement due the HMO (which is subject to the audit provisions of this subpart) and a retroactive adjustment to bring interim payments into agreement with the reimbursable amount due the HMO. A final settlement may be made with the HMO even though a provider of services which is not owned or operated by the HMO or related to the HMO by common ownership or control and which provides services to the HMO's enrollees who are title XVIII beneficiaries has not had a final settlement with SSA under Subpart D of this part for the reasonable cost of services furnished title XVIII beneficiaries other than those enrolled in the HMO. However, SSA must be satisfied that the costs of covered services provided the HMO's enrollees who are title XVIII beneficiaries, as shown in the reports specified in paragraph (b) of this section, are reasonable and that the interests of the health insurance program would best be served by not delaying final settlement with the HMO until there is a final settlement with the provider of services under Subpart D of this part (e.g., if the provider's costs represent an insignificant amount of total reimbursement due the HMO; or if SSA is satisfied that the provider's costs, as shown in the reports specified in paragraph (b) of this section, will not be modified, to any significant extent, by the final settlement with the provider under Subpart D of this part).

(2) The retroactive adjustment is based on the required financial reports (as specified in paragraph (b) of this section) of the cost actually incurred by the HMO (in accordance with the principles of cost reimbursement in § 405.2040 through § 405.2044) for providing covered services to enrollees in the HMO who are title XVIII beneficiaries.

(3) The notice of amount of reimbursement by the health insurance program shall:

(i) Explain SSA's determination regarding total reimbursement due the organization by the health insurance program for the contract period covered by the financial information specified in paragraph (b) of this section;

(ii) Relate this determination to the HMO's claimed total reimbursable costs for such period;

(iii) Explain the amount(s) and reason(s), by appropriate reference to law, regulations, and health insurance program policy and procedures, where such determination may differ from the HMO's claim; and

(iv) Inform the HMO of its right to have the determination reviewed at a hearing in accordance with Subpart R of this part.

(4) SSA's determination (as contained in the notice of amount of reimbursement by the health insurance program) shall constitute the basis for making retroactive adjustments to any program payment made by the health insurance program to the HMO during the period to which the determination applies, including the suspending or offset of further payments to the HMO in order to recover, or to aid in the recovery of, any overpayment identified in the determination as having been made to the HMO, notwithstanding a request for a hearing on the determination which the HMO may make pursuant to Subpart R of this part. Any such suspension shall remain in effect as specified in § 405.373(a).

PRINCIPLES OF REIMBURSEMENT FOR RISK-BASIS HMO'S UNDER TITLE XVIII

§ 405.2049 Reimbursement of risk-basis HMO's—Introduction.

(a) A mature HMO (as defined in § 405.2001(b)) which meets the requirements of paragraph (a) (1) or (2) of § 405.2004, may elect to be reimbursed on an incentive basis for the covered services it furnishes to its enrollees who are title XVIII beneficiaries. The distinguishing characteristic of incentive reimbursement is that the total payment to the HMO for a contract period is determined by comparing the HMO's adjusted per capita incurred cost to the adjusted average per capita cost of providing covered title XVIII services (including chronic renal disease benefits) to a similar beneficiary-population outside the HMO. Based on this comparison, the HMO and the health insurance program trust funds share savings up to prescribed limits, or the HMO absorbs losses. If the HMO's adjusted per capita incurred cost is less than the adjusted average per capita cost as defined in § 405.2051, the difference is termed "savings" and payment of the HMO's share and the share of these savings to be paid to such trust funds is made in the manner described in § 405.2052(b). If the HMO's adjusted per capita incurred cost exceeds the adjusted average per capita cost, the difference is termed "losses" and such losses are absorbed by the HMO. Losses are carried forward and offset from savings realized in later contract periods, as provided in § 405.2052(c).

(b) The specific principles and procedures applicable to incentive reimbursement are discussed in §§ 405.2050 through 405.2054. The procedures described in § 405.2045 (Interim per capita payments) are also applicable to risk-

basis HMO's. Monthly interim per capita payments made by SSA to a risk-basis HMO are determined on the same basis as those made to cost-basis HMO's and are not adjusted for estimated savings. In no case shall the interim per capita reimbursement rate of payment exceed the estimated adjusted average per capita cost.

§ 405.2050 Determining adjusted incurred cost.

SSA uses the cost determination procedure described in this section to develop an adjusted incurred cost for the HMO.

(a) *Total reimbursable cost.* The reimbursement principles as described in §§ 405.2040–405.2044 are used to determine the total allowable, reimbursable, reasonable cost incurred by the risk-basis HMO for the contract period in providing covered items and services to its enrollees who are title XVIII beneficiaries except for the provisions pertaining to reinsurance costs and for the limitations on reimbursement set forth in § 405.2042 (b) (14).

(b) *Reinsurance.* (1) The health insurance program's share of reasonable costs for reinsurance (i.e., protection against all or part of the financial risk that the HMO is obligated to assume under its subscriber agreement with enrollees who are title XVIII beneficiaries) is allowable to the extent that the HMO incurs reinsurance costs for:

(i) Covered emergency services (§ 405.2005(a) (3) (i)) furnished outside the HMO's service area (§ 405.2005(a) (1)),

(ii) Covered urgently needed services (§ 405.2005(a) (3) (ii)) furnished outside the HMO's enrollment area (§ 405.2005(a) (1)), and

(iii) Other covered items and services furnished outside the HMO's enrollment area through arrangements (§ 405.2005(a) (2)).

(2) If the actual cost of reinsurance cannot be readily determined for such covered items or services specified in paragraph (b) (1) of this section, which are furnished enrollees who are title XVIII beneficiaries, a reasonable estimate may be used.

(3) If a risk-basis HMO is reimbursed for reinsurance (as described in paragraph (b) (1) or (2) of this section), the HMO's allowable cost excludes any amount otherwise representing payment for such covered services delivered to its enrollees who are title XVIII beneficiaries for which the HMO is covered by reinsurance. If a risk-basis HMO does not obtain reinsurance (as described in paragraph (b) (1) or (2) of this section) and/or has a reciprocal arrangement with other HMO's for providing such covered services, the HMO is reimbursed for the reasonable cost actually incurred by the HMO for these covered services delivered to enrollees who are title XVIII beneficiaries.

(c) *Title XVIII limitations on reimbursement.* Unless otherwise specified in this subpart, the title XVIII limitations on reimbursement set forth in § 405.2042 (b) (14) shall not apply to services fur-

nished to an HMO's enrollees who are title XVIII beneficiaries by a provider of services or other health care facility owned or operated by a risk-basis HMO or related to a risk-basis HMO by common ownership or control.

(d) *Adjusted incurred cost.* The reasonable costs actually incurred by the HMO under a contract pursuant to section 1876 of the Act in providing covered services to enrollees who are title XVIII beneficiaries, as determined pursuant to paragraph (a) of this section, are adjusted in order to obtain greater comparability with the adjusted average per capita cost. Adjustments to the HMO's incurred cost for the purpose of determining savings or losses (see § 405.2052(a)) include:

(1) *Deductibles and coinsurance.* There is deducted from the reasonable cost actually incurred by the HMO, for covered services furnished title XVIII beneficiaries enrolled with the HMO, an amount equal to the actuarial value of the deductible and coinsurance amounts which would otherwise be applicable to the covered services for which payment is being made if the title XVIII beneficiaries who received the services had not been enrolled in the HMO.

(2) *HMO option—payment to providers by intermediaries.* If the HMO has elected to have providers of services (as defined in section 1861(u) of the Social Security Act) that are participating in the health insurance program and that furnish covered services to its enrollees who are title XVIII beneficiaries, obtain reimbursement directly from their title XVIII intermediaries (see § 405.2041 (d)), the reasonable cost of these covered items and services reimbursed by the intermediaries (less applicable deductibles and coinsurance), as well as intermediary administrative costs applicable to such payment, is added to the reasonable costs actually incurred by the HMO.

(3) *HMO option—payment by carriers for out-of-plan services.* If covered items and services for which the HMO is financially responsible are provided out-of-plan and are reimbursed by title XVIII carriers, the reasonable charges paid for these covered items and services (less applicable deductibles and coinsurance), as well as carrier administrative costs applicable to such payment, are added to the reasonable cost actually incurred by the HMO.

§ 405.2051 Determining adjusted average per capita cost.

(a) *General.* The adjusted average per capita cost, as described in section 1876 (a) (3) (A) (iv) of the act, is the amount that is compared with the HMO's adjusted per capita incurred cost to determine whether the HMO has incurred a per capita "savings" or "loss". It represents the average per capita cost, subject to appropriate actuarial adjustment, which would have been incurred by the health insurance program on behalf of enrollees of the HMO who are title XVIII beneficiaries if they had received their covered services from providers of services, physicians, suppliers, and organiza-

tions other than the HMO in the same "geographic area" (as defined in paragraph (b) of this section) served by the HMO or a "similar area" (as defined in paragraph (c) of this section). SSA computes the adjusted average per capita cost or an estimated adjusted average per capita cost under the following circumstances:

(1) As part of the procedures for final settlement and payment with a risk-basis HMO (see § 405.2054), SSA determines the adjusted average per capita cost;

(2) For use in the interim settlement and tentative settlement with a risk-basis HMO (see § 405.2053), SSA determines an estimated adjusted average per capita cost subject to adjustment at the time of final settlement; and,

(3) Upon request by the HMO, SSA makes a preliminary estimate of the adjusted average per capita cost for the contract period or the following year, using the latest available data applicable to such an HMO. Such a preliminary estimate of the adjusted average per capita cost is computed and furnished to the HMO with the understanding that the adjusted average per capita cost retrospectively computed at the time of final settlement, using the latest available data applicable to the HMO, may be significantly different from the estimate.

(b) *Geographic area.* The geographic area used in determining the adjusted average per capita cost is normally the area or areas of residence for enrollees in the HMO who are title XVIII beneficiaries.

(c) *Similar area.* In some cases the geographic area, as defined in paragraph (b) of this section, may not be an appropriate basis of comparison because, if used, it would result in an HMO's being reimbursed significantly more or less than is reasonable for the covered services rendered. If there is substantial evidence of special characteristics that may have such results (e.g., an area that was significantly underserved and the HMO provided adequate services), SSA may determine on an individual HMO basis that a similar area is a more appropriate geographic area for computing the adjusted average per capita cost. In such a case, SSA selects an area similar in its major actuarial features to the HMO's geographic area, except for the special characteristics.

(d) *Computation of adjusted average per capita cost.* Before the beginning of the contract period, SSA shall inform the HMO of the specific actuarial factors to be included in computing the adjusted average per capita cost at the time of final settlement. In computing the adjusted average per capita cost, SSA uses the U.S. per capita incurred cost, as defined in paragraph (d) (1) of this section, modified by a number of actuarial factors, as described in paragraphs (d) (2) through (4) of this section.

(1) *U.S. per capita incurred cost.* The U.S. per capita incurred cost represents the average per capita cost, including administrative expenses reimbursed to intermediaries and carriers, incurred by the health insurance programs, as deter-

mined on an accrual basis, for covered services furnished to title XVIII beneficiaries. The U.S. per capita incurred cost is based on the determination of incurred cost used by the Office of the Actuary of SSA, in connection with the Annual Reports of the Board of Trustees of the Social Security Trust Funds, and covers the same time period as the HMO's contract period.

(2) *Geographic index.* In computing the adjusted average per capita cost, an appropriate actuarial adjustment is made by SSA to reflect the relative level of health insurance program expenditures for title XVIII beneficiaries in the HMO's geographic area, who are not enrolled in the HMO. This adjustment is independent of the influence of the age and sex distribution of the area's title XVIII beneficiaries. The geographic index is based on services reimbursed by the health insurance program and utilizes the most accurate and timely data available to SSA to adapt the U.S. per capita incurred cost figure to the HMO's geographic area.

(3) *Age, sex, and disability status.* The adjusted average per capita cost is adjusted to reflect the age and sex distribution and disability status of the HMO's enrollees who are title XVIII beneficiaries, as health insurance program experience indicates differences in costs by age, sex, and disability status of such beneficiaries. Adjustments for age and sex are made for those beneficiaries age 65 and over as well as those beneficiaries under age 65 qualifying for title XVIII benefits on the basis of disability. The adjustments for age and sex of beneficiaries under age 65 include those beneficiaries qualifying for title XVIII benefits under section 226(b) or 226(e) of the Act. The adjustment factors for age and sex are based on data compiled annually by the Office of Research and Statistics of SSA and the distribution by age and sex for the HMO's title XVIII beneficiaries. For example, for beneficiaries 65 and over, such adjustment is comprised of separate factors for each 5 years of age by sex through age 84, plus a separate factor for all beneficiaries 85 and over by sex.

(4) *Other relevant factors.* If accurate data are available and appropriate, race, institutional status, and other relevant factors, as specified in section 1876(a) (3) (A) (iv) of the Social Security Act, are reflected in the adjusted average per capita cost computation.

§ 405.2052 Computation of the amount due to (or from) the HMO

(a) *Determining per capita savings or losses.* SSA determines whether the risk-basis HMO has incurred savings or losses by comparing the HMO's adjusted incurred cost (see § 405.2050) to the adjusted average per capita cost (see § 405.2051). In making this comparison, both the HMO's adjusted incurred cost and the adjusted average per capita cost are first converted to a monthly per capita basis. To accomplish this conversion, the HMO's adjusted incurred cost is divided by the total number of contract

months for title XVIII beneficiaries who are enrollees to develop the HMO's monthly per capita adjusted incurred cost. (Total number of contract months for title XVIII beneficiaries who are enrollees is the cumulative number of such contracts, recorded as of the first day of each month, for all months included in the HMO's contract period. If more than one person is enrolled under one contract, each person is counted for a contract month.) The adjusted average per capita cost is also converted to a monthly per capita basis. A comparison is then made of the HMO's monthly per capita adjusted incurred cost and the monthly adjusted average per capita cost to determine the monthly per capita savings or losses as defined in § 405.2049. This monthly per capita savings (or losses) is multiplied by the cumulative total number of contract months for title XVIII beneficiaries who are enrollees of the HMO during the contract period to determine the total amount of savings to be apportioned (or losses to be absorbed).

(b) *Apportionment of savings.* Accrued savings for each contract period shall be apportioned between the HMO and the health insurance program, following the close of such contract period, as follows:

(1) If losses for prior contract period(s) have not been offset, the provisions of paragraph (c) of this section apply.

(2) If there are no losses for prior contract period(s) to be offset, savings of up to 20 percent of the adjusted average per capita cost are apportioned equally between (i) the HMO and (ii) the health insurance program trust funds.

(3) Remaining savings in excess of 20 percent of the adjusted average per capita cost, are apportioned entirely to the health insurance program trust funds.

(c) *Carrying losses forward and offsetting losses.* If an HMO incurs losses, they are absorbed fully by the HMO. Such losses are carried forward and offset from savings realized in later contract periods as follows:

(1) Losses are offset against savings only in subsequent contract periods, i.e., not against savings in prior contract periods.

(2) Losses are offset in the order in which they are incurred, i.e., losses for earliest contract period(s) are offset first.

(3) Losses for prior contract period(s) in excess of current contract period's savings are carried forward and offset in accordance with paragraph (c) (2) of this section.

(4) If there are savings remaining after losses for prior contract periods have been offset, the remaining savings up to 20 percent of the adjusted average per capita cost are apportioned equally between (i) the HMO and (ii) the health insurance program trust funds except that remaining savings in excess of 20 percent of the adjusted average per capita cost shall be apportioned entirely to the health insurance program trust funds.

(5) If a merger is effected involving one or more risk-basis HMO's, a loss carry-over is permitted to the surviving risk-basis HMO but only to the extent

that, for reporting periods prior to the effective date of the merger, the combined total losses of the one or more risk-basis HMO's that are parties to the merger exceed the combined total savings of the one or more risk-basis HMO's that are parties to the merger.

(6) In the case of HMO's that are related organizations, the losses incurred by one HMO may not be offset against the savings of another.

(7) If a risk-basis HMO subsequently exercises its option to become a cost-basis HMO, losses from prior contract period(s) are not considered an allowable cost to the cost-basis HMO.

(8) Deficits incurred by an HMO prior to the effective date of its risk-basis contract with SSA are not carried forward nor offset against savings in contract periods subsequent to the date of the contract.

(9) If a risk-basis HMO, having a carry-over of losses, terminates its participation in the health insurance program, losses from prior contract period(s) in excess of current contract period's savings are not considered an allowable cost of either the last contract period or the termination process and such a loss carry-over is not available if a successor HMO subsequently enters into an agreement to be reimbursed as a risk-basis HMO.

(d) *Computation of the amount due to (or from) the HMO for the contract period.* (1) The liability of the health insurance program, as determined by SSA for the contract period, equals the total allowable reasonable cost actually incurred by the HMO for covered services (less deductibles and co-insurance) provided enrollees who are title XVIII beneficiaries (including those entitled on the basis of end stage renal disease).

(i) Plus the HMO's share of savings, (see paragraphs (a) and (b) of this section), or

(ii) Minus the HMO's losses, (see paragraphs (a) and (c) of this section).

(2) To determine the amount due to (or from) the HMO, SSA takes into account any previously made interim payments to the HMO as well as payments at the time of interim settlement and tentative settlement which are applicable to the same contract period. For purposes of this section, the term "interim payments to the HMO" includes all payments made by SSA for the pertinent contract period, including monthly interim per capita payments, lump sum payments, and payments made at the time of interim settlement and tentative settlement (see § 405.2053).

§ 405.2053 Interim and tentative settlements.

(a) *Interim settlement.*—(1) *Determination.* Within 90 days after the close of a contract period (or not more than 30 days after the submission of adequate reports, data, and information required by SSA if such submission occurs more than 60 days after the end of the contract period) SSA makes a determination of the estimated amount payable to the HMO under its contract with SSA

for the contract period. Such determination is based on the estimated adjusted average per capita cost (see § 405.2051), the HMO's per capita incurred allowable costs, acceptable interim cost reports, enrollment data (as recorded in SSA records), actuarial data, and such other required data and information in such form and detail as required by SSA and as are available. Besides the data required by § 405.2044, the HMO shall maintain and submit, along with the last interim cost report for the contract period, other required data and information. Such data and information include the following:

(i) The number of beneficiaries age 65 and over enrolled in the HMO for hospital insurance and supplementary medical insurance benefits (or supplementary medical insurance benefits only) during the contract period, and their distribution by age, sex, and disability status for each subdivision in the HMO's geographic area;

(ii) The number of beneficiaries under age 65 enrolled in the HMO for hospital insurance and supplementary medical insurance benefits (or supplementary medical insurance benefits only) during the contract period and their distribution by age, sex, and disability status for each subdivision in the HMO's geographic area; and

(iii) Any other data and information for the contract period required by SSA, submitted at such time and in such form and detail as required by SSA.

(2) *Payment.* On the basis of the determination as to interim settlement, 50 percent of any amounts deemed payable to the HMO or to the health insurance program trust funds shall be paid by the HMO or by SSA, as appropriate, within 30 days of the notice of determination regarding interim settlement.

(b) *Tentative settlement.* If a final settlement is not made within one year after the HMO submits the reports specified in § 405.2054(b), a tentative settlement shall be made by SSA. At the time of tentative settlement, the determination of the estimated amount deemed payable to the HMO under its contract with SSA for the contract period, is made on the basis of data as required by paragraph (a) of this section and additional available data. A provision of the settlement is payment by either SSA or the HMO, as appropriate, within 30 days of the determination of any estimated amounts due, including estimated savings or losses. If appropriate, the amount of the tentative settlement is subject to adjustment at the time of final settlement.

§ 405.2054 Final settlement.

(a) *General.* Final settlement and payment of amounts due the HMO or the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund shall be made, following submission of an independently certified financial statement and supporting documents as described in paragraph (b) of this section.

(b) *Certified financial statement.*—(1) *General.* The HMO shall submit to SSA an independently certified financial statement and supporting documents, in such form and detail as SSA may prescribe, no later than 180 days following the close of the contract period. Such statement shall include:

(i) The HMO's per capita incurred costs (based upon the principles described in §§ 405.2040 through 405.2043) of providing covered services to its health insurance beneficiaries who are enrollees during the contract year;

(ii) The HMO's methods of apportioning costs among enrollees who are title XVIII beneficiaries, enrollees who are not title XVIII beneficiaries, and others (non-members receiving health care services on a fee-for-service basis or other basis), and

(iii) Such information on enrollment and other data as SSA may require.

(2) *Failure to submit report.* Whenever the HMO fails to submit the required adequate financial statement and supporting documents within the time specified in paragraph (b) of this section, except where the HMO has requested and received approval of an extension of time for good cause shown, such failure to report such information may be deemed by SSA to constitute evidence of likely overpayment, on the basis of which appropriate recovery of amounts previously paid, and/or the reduction of current interim payments, may be made.

(c) *Final settlement.* The final settlement consists of a determination by SSA, following the submission of the reports specified in paragraph (b) of this section of the amount due to the HMO as explained in § 405.2052, subject to the audit provisions of this subpart, and a retroactive adjustment by SSA of amounts paid by the HMO for the amounts determined to be due the HMO or the health insurance program trust funds, as appropriate. Payments already made, including amounts paid either by the HMO or by SSA as a result of the interim settlement (see § 405.2053(a)) and tentative settlement (see § 405.2053(b)), are brought into agreement with the amount due to (or from) the HMO, in accordance with the provisions of § 405.2052. A final settlement may be made with the HMO even though a provider of services which is not owned or operated by the HMO or related to the HMO by common ownership or control and which provides services to the HMO's enrollees who are title XVIII beneficiaries has not had a final settlement with SSA under Subpart D of this part for the reasonable cost of services furnished title XVIII beneficiaries other than those enrolled in the HMO. However, SSA must be satisfied that the costs of covered services provided the HMO's enrollees who are title XVIII beneficiaries, as shown in the reports specified in paragraph (b) of this section, are reasonable and that the interests of the health insurance program would best be served by not delaying final settlement with the HMO until there is a final settlement with the provider of services under Subpart D of this part (e.g., if the

provider's costs represent an insignificant amount of total reimbursement due the HMO's enrollees who are title XVIII provider's costs, as shown in the reports specified in paragraph (b) of this section, will not be modified, to any significant extent, by the final settlement with the provider under Subpart D of this part). SSA's determination (as contained in a notice of health insurance reimbursement) and retroactive adjustment are explained in paragraphs (c) (1) and (2) of this section.

(1) The notice of health insurance program reimbursement shall:

(i) Explain SSA's determination regarding total health insurance program reimbursement due the organization for the contract period covered by the reports specified in paragraph (b) of this section, including an explanation of the computation of savings or losses;

(ii) Relate this determination to the HMO's claimed total reimbursable costs for such period;

(iii) Explain the amount(s) and reason(s), by appropriate reference to law, regulations, and health insurance program policy and procedures, if such determination of reimbursable cost may differ from the HMO's claim;

(iv) Inform the HMO of its right to have the determination reviewed at a hearing in accordance with Subpart R of this part.

(2) SSA's determination (as contained in the notice of health insurance program reimbursement) shall constitute the basis for making retroactive adjustments to any health insurance program payments made to the HMO during the period to which the determination applies.

(3) SSA may suspend or offset further payments to the HMO in order to recover, or to aid in the recovery of, any overpayment identified in the determination as having been made to the HMO, notwithstanding a request for a hearing on the determination which the HMO may make

pursuant to Subpart R of this part. Any such suspension shall remain in effect as specified in § 405.373(a).

(d) *Interest.* In order that neither the HMO nor the health insurance program trust funds gain from excessive delay in final settlement (see paragraph (c) of this section), interest is charged on amounts payable if payment by SSA or the HMO, as determined by the final settlement, takes place more than 90 days after the submission of an acceptable certified financial statement and supporting documents. Such interest, which accrues on amounts outstanding and unpaid beginning with the 91st day following the submission of such reports and continuing up to, but not including, the date such amounts are paid, is computed at a rate equal to the average rate of interest payable on obligations of the Federal Government issued on such 91st day for purchase by such trust funds.

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TUESDAY, NOVEMBER 9, 1976



PART III:

DEPARTMENT OF LABOR

**Employment and Training
Administration**

■

DISASTER UNEMPLOYMENT ASSISTANCE

Proposed Revision

DEPARTMENT OF LABOR

Employment and Training Administration

[20 CFR Part 625]

DISASTER UNEMPLOYMENT
ASSISTANCE

Notice of Proposed Rulemaking

On October 11, 1974, a document was published in the *FEDERAL REGISTER* (39 FR 36579) revising Part 625 in Chapter V of Title 20 of the Code of Federal Regulations to facilitate the implementation of the Disaster Relief Act of 1974, Pub. L. 93-288, 88 Stat. 143.

Although the revised Part 625 was made effective upon publication in the *FEDERAL REGISTER*, comments were solicited through November 11, 1974. No written comments were received. However, oral comments with respect to the revision of Part 625 from persons administering the program have been given due consideration, and the Part is proposed to be revised in the light of these comments.

PROPOSED CHANGES

The proposed changes to Part 625 are summarized as follows:

1. Technical and clarifying changes are made throughout Part 625, including renumbering of sections, addition of paragraph headings and the transferring of provisions from one section to another.

2. In § 625.1 the savings clause retaining Part 625 as in effect on March 31, 1974, with respect to the application of the Disaster Relief Act of 1970 to major disasters declared prior to April 1, 1974, was deleted and made a new section designated § 625.20.

3. In § 625.2(c) defining "Announcement date" the State agency shall now announce the availability of disaster unemployment assistance in place of the Governor. This should make more additional information available to the public.

4. In § 625.2(f) redefining "Disaster assistance period" so as to accord with no payments being made prior to the major disaster as prescribed in the Disaster Relief Act of 1974.

5. In § 625.2(r) adding the "State law" applicable to the Canal Zone, the Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands.

6. In § 625.2(w) redefining "Week of unemployment" so that any wages an individual earns shall be deducted as prescribed in the applicable State law.

7. In § 625.2 three definitions, namely: "Applicable State law", "Notification", and "Suitable work" have been deleted as the terms are more clearly defined in subsequent sections. In addition eight new definitions were added, namely: "Agreement", "Compensation", "Emergency Compensation", "SUA", "DUA", "Federal Coordinating Officer", "Unemployed worker", and "Unemployed Self-Employed Individual." These definitions have been used in administering the program in the past but were not defined terms. As a result, the majority of

subparagraphs in this section have been relettered to permit the defined terms to occur in alphabetical order.

8. In § 625.3 this section has been renumbered § 625.17 and entitled "Announcement of the beginning of a Disaster Assistance Period." The general context has remained the same with the exception that the State agency shall announce the availability of DUA as defined in "Announcement date" instead of the Governor. This should permit the public to have available more information pertaining to the filing of applications since the State shall use all available news media to inform the public of the procedures for filing applications.

9. In § 625.4 the section has been renumbered § 625.8, "Applications for Disaster Unemployment Assistance." This section has been expanded to include "Interstate applications" formerly § 625.6. There is no substantive change.

10. In § 625.7, "Eligibility", the section has been renumbered § 625.4, "Eligibility requirements for DUA." Three new requirements have been added. First, the State agency must have entered into an Agreement with the Secretary of Labor. Second, week is a week of unemployment for the individual. Third, the individual has not refused a bona fide offer of suitable employment. All three of these requirements had to be met in the past, but were not specified in § 625.7.

11. In § 625.8 this section has been changed to § 625.5, "Unemployment caused by a major disaster." This section has been reworded to discern between an unemployed worker and an unemployed self-employed individual. In addition it has added the category to include the individual who has been injured as a direct result of a major disaster and cannot work. It has deleted the category that an individual who was unemployed at the time of the major disaster for a period of less than 10 weeks shall be eligible and also the individual who has completed training or schooling 10 weeks prior to the major disaster. It is believed that the unemployment of these two classes of individuals cannot be considered a direct cause of the major disaster and their primary source of income and livelihood was not lost or interrupted as a direct result of the major disaster.

12. In § 625.9, "Amount", the section is now designated § 625.6, "Disaster Unemployment Assistance; weekly amount." In computing an individual's weekly amount, the provisions change the computation so that an individual's weekly amount shall be computed by the same computation as used in the applicable State law for computing regular UI weekly amounts with the exception that both covered and noncovered wages shall be used. This will limit an individual's weekly DUA amount to no more than the weekly amount that the individual would be entitled to if the individual would be receiving unemployment compensation. Many complaints have been received that low paid workers receive more under the present computation than they earned while employed prior

to the major disaster. This section shall also deduct wages for any week to the same extent such wages are deductible under the applicable State law. This will enable the State agency to compute the deductible amount uniformly and only once for both UI and DUA. The other deductions presently contained in § 625.9 have now been included in § 625.13, "Restrictions on Entitlement."

13. In § 625.10, "Disclosure of Information," is now renumbered § 625.16. The section has been expanded to include the effect of the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act of 1974 (5 U.S.C. 552a).

14. In § 625.11, "Determination" the section has been renumbered § 625.9. Although the State agencies used affidavits in securing employment information for computing an individual's DUA entitlement, the regulations never specified that the State agency use the affidavit when wage information was not available.

15. In § 625.12, "Reconsideration and Review," the section has been titled "Appeal and Review" and renumbered § 625.10. Although the section has been amplified, only one substantive change is made. The Assistant Secretary for Employment and Training Administration on his motion only may review any application for DUA. This shall permit uniformity throughout the regions and States.

16. In § 625.13, "Overpayments," the section is renumbered § 625.14, "Overpayments; disqualification for fraud." This section has been amplified, although the added provisions have been used in administering the program, but were not specified in the regulations. The applicable State agency shall recover any overpayment of DUA which the individual may have in another State agency. Disaster Unemployment Assistance shall be used to recover any debt owed to the United States, but not a debt owed to any other entity, any State or person.

A State agency shall not waive any DUA overpayment even if State law permits the waiver of regular UI overpayments. In addition a new administrative penalty is added for any individual filing a fraudulent application. The applicable State law was not used as due to the average weeks of DUA an individual receives and the number of Disaster Unemployment Assistance Periods the individual would normally encounter compared to UI, the State law penalties generally would be too severe and not effective.

17. In § 625.15 the information has been consolidated in § 625.1 and § 625.15 deleted.

The proposed revised regulations contain five new sections. They are as follows:

18. In § 625.11 it is provided that the terms and conditions of the applicable State law shall apply as specifically set forth in the provisions of this Part.

19. In § 625.12 the section contains the definition "applicable State law" (625.2(d)) which has been deleted from the definitions.

20. In § 625.13 the reductions applicable to DUA and which have been deleted

ed from § 625.9 are now included as restrictions on entitlement.

21. In § 625.15 it is provided that an individual may not waive, release or assign any of the individual's rights to DUA. In addition it provides that certain legal process is prohibited.

22. In § 625.18 a provision is made that the public, as required under the Freedom of Information Act, is entitled to obtain a copy of the Agreement between the State and the Secretary of Labor if so requested.

COMMENTS ON PROPOSAL

Interested persons are invited to submit written data, views or arguments on these proposed regulations to the U.S. Department of Labor, Employment and Training Administration, Room 7000, Patrick Henry Building, 601 D Street N.W., Washington, D.C. 20213.

All comments received on or before December 9, 1976, will be considered before taking action on the proposal. All comments received in response to this invitation will be available for public inspection during normal business hours at the foregoing address.

Signed at Washington, D.C., on November 3, 1976.

WILLIAM H. KOLBERG,
Assistant Secretary for
Employment and Training.

In consideration of the foregoing it is proposed that Part 625 of Chapter V of Title 20, Code of Federal Regulations, be revised as set out below:

PART 625—DISASTER UNEMPLOYMENT ASSISTANCE

Sec.	
625.1	Purpose; rules of construction.
625.2	Definitions.
625.3	Employment services.
625.4	Eligibility requirements for Disaster Unemployment Assistance.
625.5	Unemployment caused by a major disaster.
625.6	Disaster Unemployment Assistance: weekly amount.
625.7	Disaster Unemployment Assistance: duration.
625.8	Applications for Disaster Unemployment Assistance.
625.9	Determination of entitlement; notices to individual.
625.10	Appeal and review.
625.11	Provisions of State law applicable.
625.12	The applicable State for an individual.
625.13	Restrictions on entitlement; disqualification.
625.14	Overpayments; disqualification for fraud.
625.15	Inviolable rights to DUA.
625.16	Recordkeeping; disclosure of information.
625.17	Announcement of the beginning of a Disaster Assistance Period.
625.18	Public access to Agreements.
625.19	Information, reports and studies.
625.20	Savings clause.

AUTHORITY: Secs. 302(a) and 601, Disaster Relief Act of 1974, Pub. L. 93-288, 88 Stat. 143, 146, 163; EO 11795, 39 FR 25939; and the delegation of authority from the Secretary of Housing and Urban Development to the Secretary of Labor, effective August 5, 1974, 39 FR 33020. Interpret or apply sec. 407 of the Disaster Relief Act of 1974, 88 Stat. 156.

§ 625.1 Purpose; rules of construction.

(a) *Purpose.* Section 407 of the "Disaster Relief Act of 1974" created a program for the payment of unemployment assistance to unemployed individuals whose unemployment is caused by a major disaster, and to provide employment services to those individuals. The unemployment assistance provided for in section 407 of the Act is hereinafter referred to as Disaster Unemployment Assistance, or DUA. The regulations in this Part are issued to implement section 407 of the Act.

(b) *First rule of construction.* Section 407 of the Act and the implementing regulations in this Part shall be construed liberally so as to carry out the purposes of the Act.

(c) *Second rule of construction.* Section 407 of the Act and the implementing regulations in this Part shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act throughout the United States.

(d) *Effectuating purpose and rules of construction.*

(1) In order to effectuate the provisions of this section each State agency shall forward to the United States Department of Labor, not later than 10 days after issuance, a copy of each judicial or administrative decision ruling on an individual's entitlement to DUA. On request of the Department, a State agency shall forward to the Department a copy of any determination or redetermination ruling on an individual's entitlement to DUA.

(2) If the Department believes a determination, redetermination, or decision is inconsistent with the Secretary's interpretation of the Act, the Department may at any time notify the State agency of the Department's view. Thereafter, the State agency shall appeal if possible; and shall not follow such determination, redetermination, or decision as a precedent; and, in any subsequent proceedings which involve such determination, redetermination, or decision, or wherein such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the State agency shall inform the hearing officer or court of the Department's view and shall make all reasonable efforts, including appeal or other proceedings in any appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

(3) A State agency may request reconsideration of a notice that a determination, redetermination, or decision is inconsistent with the Act, and shall be given an opportunity to present views and arguments if desired. If a determination, redetermination, or decision setting a precedent becomes final, which the Department believes to be inconsistent with the Act, the Secretary will decide whether the Agreement with the State shall be terminated.

(4) Concurrence of the Department in a determination, redetermination, or decision shall not be presumed from the

absence of a notice issued pursuant to this paragraph.

§ 625.2 Definitions.

For the purposes of the Act and this Part:

(a) "Act" means section 407 of the Disaster Relief Act of 1974, Pub. L. 93-288, 88 Stat. 143, 156, approved May 22, 1974; 42 U.S.C. 5177.

(b) "Agreement" means the Agreement entered into pursuant to the Act, Between a State and the Secretary of Labor of the United States, under which the State agency of the State agrees to make payments of Disaster Unemployment Assistance in accordance with the Act and the regulations and procedures thereunder prescribed by the Secretary.

(c) "Announcement date" means the first day on which the State agency publicly announces the availability of Disaster Unemployment Assistance in the State, pursuant to § 625.17 of this Part.

(d) (1) "Compensation" means unemployment compensation; that is, cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular, additional, extended, and emergency compensation as defined in this section, and unemployment compensation payable under the Hawaii Agricultural Unemployment Compensation Law and the Railroad Unemployment Insurance Act.

(2) "Regular compensation" means compensation payable to an individual under any State law or the unemployment compensation plan of a political subdivision of a State and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85 (Parts 609 and 614 of this Chapter), but not including extended compensation or additional compensation.

(3) "Additional compensation" means compensation totally financed by a State and payable under a State law by reason for conditions of high unemployment or by reason of other special factors, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85.

(4) "Extended compensation" means compensation payable to an individual for weeks of unemployment in an extended benefit period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 (title II Public Law 91-373; 84 Stat. 695, 708; Part 615 of this Chapter), as amended, with respect to the payment of extended compensation, and, when so payable, includes additional compensation and compensation payable pursuant to 5 U.S.C. Chapter 85.

(5) "Emergency compensation" means compensation payable under the Emergency Unemployment Compensation Act of 1974 (Pub. L. 93-572; 88 Stat. 1869; Part 618 of this Chapter, 41 FR 12151), as amended, and which is referred to as Federal Supplemental Benefits.

(6) "Special Unemployment Assistance" means the unemployment assistance payable under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (title II, Pub. L. 93-567;

88 Stat. 1845, 1850; Part 619 of this Chapter, 41 FR 12161), as amended.

(e) "Date the major disaster began" means the date a major disaster first occurred, as specified in the understanding between the Federal Disaster Assistance Administration and the Governor of the State in which the major disaster occurred.

(f) "Disaster Assistance Period" means the period beginning with the first Sunday following the date the major disaster began, and ending with the last week which begins prior to one year subsequent to the date the major disaster was declared, or, if earlier, the date the Federal Coordinating Officer, after consultation with the appropriate Regional Administrator, Employment and Training Administration has determined that unemployment in the major disaster area is no longer attributable to the major disaster.

(g) "Disaster Unemployment Assistance" means the assistance payable to an individual eligible for the assistance under the Act and this Part, and which is referred to as DUA.

(h) "Federal Coordinating Officer" means the official appointed pursuant to section 303 of the Disaster Relief Act of 1974, to operate in the affected major disaster area.

(i) "Governor" means the chief executive of a State.

(j) "Initial application" means the first application for DUA filed by an individual, on the basis of which the individual's eligibility for DUA is determined.

(k) "Major disaster" means a major disaster as declared by the President pursuant to section 301(b) of the Disaster Relief Act of 1974.

(l) "Major disaster area" means the area identified as eligible for Federal assistance by the Federal Disaster Assistance Administration, pursuant to a Presidential declaration of a major disaster.

(m) "Secretary" means the Secretary of Labor of the United States.

(n) "Self-employed individual" means an individual whose primary reliance for income is on the performance of services in the individual's own business, or on the individual's own farm.

(o) "Self-employment" means services performed as a self-employed individual.

(p) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, the Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(q) "State agency" means—

(1) In all States except the Canal Zone, the Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands, the agency administering the State law; and

(2) In the Canal Zone, the Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands, the agency designated in the Agreement entered into by the State.

(r) "State law" means, with respect to—

(1) The States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, the unemployment compensation law of the State which has been approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954, 26 U.S.C. 3304; and

(2) The Virgin Islands, the unemployment compensation law of the Virgin Islands; and

(3) The Canal Zone, the Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands, the Hawaii Employment Security Law.

(s) "Unemployed worker" means an individual who lived in or was employed in the major disaster area at the time the major disaster began and whose principal source of income and livelihood is dependent upon the individual's employment for wages, and whose unemployment is caused by a major disaster as provided in § 625.5(a).

(t) "Unemployed self-employed individual" means an individual who lived in or was employed in the major disaster area at the time the major disaster began and whose principal source of income and livelihood is dependent upon the individual's performance of service in self-employment, and whose unemployment is caused by a major disaster as provided in § 625.5(b).

(u) "Wages" means remuneration for services performed for another, and net income from services performed in self-employment.

(v) "Week" means a week as defined in the applicable State law.

(w) "Week of unemployment" means—

(1) For an unemployed worker, any week during which the individual is totally, part-totally, or partially unemployed. A week of total unemployment is a week during which the individual performs no work and earns no wages, or has less than full-time work and earns wages equal to, not more than the earnings allowance prescribed in the applicable State law. A week of part-total unemployment is a week of otherwise total unemployment during which the individual has odd jobs or subsidiary work and earns wages in excess of the earnings allowance prescribed in the applicable State law. A week of partial unemployment is a week during which the individual works less than regular, full-time hours for the individual's regular employer, as a direct result of the major disaster, and earns more than the earnings allowance prescribed by the applicable State law.

(2) For an unemployed self-employed individual, any week during which the individual is totally, part-totally, or partially unemployed. A week of total unemployment is a week during which the individual performs no services in self-employment or in an employer-employee relationship, or performs services less than full-time and earns not more than the earnings allowance prescribed in the applicable State law. A week of part-total unemployment is a week of otherwise total unemployment during which the

individual has odd jobs or subsidiary work and earns wages in excess of the earnings allowance prescribed in the applicable State law. A week of partial unemployment is a week during which the individual performs less than the customary full-time services in self-employment, as a direct result of the major disaster, and earns more than the earnings allowance prescribed by the applicable State law, or during which the only activities or services performed are for the sole purpose of enabling the individual to resume self-employment.

(3) If the week of unemployment for which an individual claims DUA is a week with respect to which the individual is reemployed in a suitable position or has commenced services in self-employment, that week shall be treated as a week of partial unemployment if the week qualifies as a week of partial unemployment as defined in this paragraph.

§ 625.3 Employment services.

Individuals applying for DUA and all other individuals who are unemployed because of a major disaster shall be afforded employment services, including counseling, referrals to suitable work opportunities, and suitable training, to assist them in obtaining reemployment in suitable positions as soon as possible.

§ 625.4 Eligibility requirements for Disaster Unemployment Assistance.

An individual shall be eligible to receive a payment of DUA with respect to a week of unemployment, in accordance with the provisions of the Act and this Part, if:

(a) That week begins during a Disaster Assistance Period;

(b) The State has entered into an Agreement which is in effect with respect to that week;

(c) The individual is an unemployed worker or an unemployed self-employed individual;

(d) The individual's unemployment with respect to that week is caused by a major disaster, as provided in § 625.5;

(e) The individual has filed a timely initial application for DUA and, as appropriate, a timely application for a payment of DUA with respect to that week;

(f) That week is a week of unemployment for the individual;

(g) The individual is able to work and available for work within the meaning of the applicable State law: *Provided*, That, an individual shall be deemed to meet this requirement if any injury caused by the major disaster is the reason for inability to work or engage in self-employment; or, in the case of an unemployed self-employed individual, the individual performs service or activities which are solely for the purpose of enabling the individual to resume self-employment; and

(h) The individual has not refused a bona fide offer of employment in a suitable position, or refused without good cause to resume or commence suitable self-employment, if the employment or self-employment could have been undertaken in that week or in any prior week in the Disaster Assistance Period.

§ 625.5 Unemployment caused by a major disaster.

(a) *Unemployed worker.* The unemployment of an unemployed worker is caused by a major disaster if:

(1) The individual no longer has a job as a direct result of the major disaster; or

(2) The individual is unable to reach the place of employment as a direct result of the major disaster; or

(3) The individual was to commence employment and does not have a job or is unable to reach the job as a direct result of the major disaster; or

(4) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of the major disaster; or

(5) The individual cannot work because of an injury caused as a direct result of the major disaster.

(b) *Unemployed self-employed individual.* The unemployment of an unemployed self-employed individual is caused by a major disaster if:

(1) The individual no longer can perform any regular services as a self-employed individual as a direct result of the major disaster; or

(2) The individual is unable to reach the place, where services as a self-employed individual are performed, as a direct result of the major disaster; or

(3) The individual was to commence regular services as a self-employed individual, but does not have a place or is unable to reach the place where the services as a self-employed individual were to be performed as a direct result of the major disaster; or

(4) The individual cannot perform services as a self-employed individual because of injury or illness caused as a direct result of the major disaster.

§ 625.6 Disaster Unemployment Assistance; weekly amount.

(a) *States of the United States.* (1) In all States except the Canal Zone, the Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the weekly amount of compensation the individual would have been paid as regular compensation, as computed under the provisions of the applicable State law for a week of total unemployment, but in no event shall such amount be in excess of the maximum amount of regular compensation authorized under the applicable State law for that week: *Provided*, That, except as provided in paragraph (a)(2) of this section, in computing an individual's weekly amount of DUA, the base period, qualifying employment and wage requirements, and benefit formula of the applicable State law shall be applied; and for the purpose of this section employment, wages, and self-employment which are not covered by the applicable State law shall be treated in the same manner

and with the same effect as covered employment and wages, but shall not include employment, self-employment or wages earned or paid for employment or self-employment, which is contrary to or prohibited by any Federal law.

(2) If an unemployed worker or unemployed self-employed individual has insufficient wages in the applicable State's base period to compute a weekly amount under paragraph (a)(1), the weekly wage to be used in computing the individual's weekly amount shall be determined by multiplying the hourly wage the individual earned or would have earned in employment or self-employment by the number of hours in the normal work week in such employment or self-employment.

(3) A weekly amount computed under paragraph (a)(1) or paragraph (a)(2) of this section, if not an even dollar amount, shall be rounded to the next higher dollar.

(b) *Canal Zone and Guam.* In the Canal Zone and the Territory of Guam the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the average of the payments of regular compensation made by all States (except the Canal Zone, the Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands) for weeks of total unemployment in the first four of the last five completed calendar quarters immediately preceding the quarter in which the major disaster began. The weekly amount so determined if not an even dollar amount shall be rounded to the next higher dollar.

(c) *American Samoa and Trust Territory.* In American Samoa and the Trust Territory of the Pacific Islands the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the amount agreed upon by the Regional Administrator, Employment and Training Administration, for Region IX (San Francisco), and the Federal Disaster Assistance Administration, which shall approximate 50 percent of the area-wide average of the weekly wages paid to individuals in the major disaster area in the quarter immediately preceding the quarter in which the major disaster began. The weekly amount so determined, if not an even dollar amount, shall be rounded to the next higher dollar.

(d) *Partial and part-total unemployment.* The weekly amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of partial or part-total unemployment shall be the weekly amount determined under paragraph (a), (b), or

(c) of this section, as the case may be, reduced (but not below zero) by the amount of wages that the individual earned in that week as determined by applying to such wages the earnings allowance for partial or part-total employment prescribed by the applicable State law.

§ 625.7 Disaster unemployment assistance; duration.

DUA shall be payable to an eligible unemployed worker or eligible unemployed self-employed individual for all weeks of unemployment which begin during a Disaster Assistance Period.

§ 625.8 Applications for disaster unemployment assistance.

(a) *Initial application.* An initial application for DUA shall be filed by an individual with the State agency of the applicable State within 30 days after the announcement date of the major disaster as the result of which the individual became unemployed, and on a form prescribed by the Secretary which shall be furnished to the individual by the State agency. An initial application filed later than 30 days after the announcement date of the major disaster shall be accepted as timely by the State agency if the applicant had good cause for the late filing, but in no event shall an initial application be accepted by the State agency if it is filed after the expiration of the Disaster Assistance Period. If the 30th day falls on a Saturday, Sunday, or a legal holiday in the major disaster area, the 30-day time limit shall be extended to the next business day.

(b) *Weekly applications.* Applications for DUA for weeks of unemployment shall be filed with respect to the individual's applicable State at the times and in the manner as claims for regular compensation are filed under the applicable State law, and on forms prescribed by the Secretary which shall be furnished to the individual by the State agency.

(c) *Filing in person.* (1) Except as provided in subparagraph (2) of this paragraph, all applications for DUA, including initial applications, shall be filed in person.

(2) Whenever an individual has good cause for not filing any application for DUA in person, the application shall be filed at such time, in such place, and in such a manner as directed by the State agency and in accordance with this Part and procedures prescribed by the Secretary.

(d) *IBPP.* The Interstate Benefit Payment Plan shall apply, where appropriate, to an individual filing applications for DUA.

(e) *Wage combining.* The "Interstate Arrangement for Combining Employment and Wages" (Part 616 of this Chapter) shall apply, where appropriate, to an individual filing claims for DUA: *Provided*, That, the "Paying State" shall be the applicable State as prescribed in the part.

(f) *Procedural requirements.* (1) The procedures for reporting and filing applications for DUA shall be consistent with this Part, and with the Secretary's "Standard for Claim filing, Claimant Reporting, Job Finding and Employment Services" (Employment Security Manual, Part V, sections 5000 et seq.) insofar as such standard is not inconsistent with this Part.

(2) The provisions of the applicable State law which apply hereunder to applications for and the payment of DUA shall be applied consistently with the requirements of Title III of the Social Security Act and the Federal Unemployment Tax Act which are pertinent in the case of regular compensation, including but not limited to those standards and requirements specifically referred to in the provisions of this Part.

§ 625.9 Determinations of entitlement; notices to individual.

(a) *Determination of initial application.* (1) The State agency shall promptly, upon the filing of an initial application for DUA, determine whether the individual is eligible, and if the individual is found to be eligible, the weekly amount of DUA payable to the individual and the period during which DUA is payable.

(2) An individual's eligibility for DUA shall be determined, where a reliable record of employment, self-employment and wages is not obtainable, on the basis of an affidavit submitted to the State agency by the individual, and on a form prescribed by the Secretary which shall be furnished to the individual by the State agency.

(b) *Determinations of weekly applications.* The State agency shall promptly, upon the filing of an application for a payment of DUA with respect to a week of unemployment, determine whether the individual is entitled to a payment of DUA with respect to that week, and, if entitled, amount of DUA to which the individual is entitled.

(c) *Redetermination.* The provisions of the applicable State law concerning the right to request, or authority to undertake; reconsideration of a determination pertaining to regular compensation under the applicable State law shall apply to determination pertaining to DUA.

(d) *Notices to individual.* The State agency shall give notice in writing to the individual, by the most expeditious method, of any determination or redetermination of an initial application, and of any determination of a determination of an application for DUA with respect to a week of unemployment which denies DUA or reduces the weekly amount initially determined to be payable, and of any redetermination of an application for DUA with respect to a week of unemployment. Each notice of determination or redetermination shall include such information regarding the determination or redetermination and notice of right to reconsideration or appeal, or both, as is furnished with written notices of determinations and written notices of redeterminations with respect to claim for regular compensation.

(e) *Promptness.* Full payment of DUA when due shall be made with the greatest promptness that is administratively feasible.

(f) *Secretary's standard.* The procedures for making determinations and redeterminations, and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals applying for DUA, shall be consistent

with this Part and with the Secretary's "Standard for Claim Determinations—Separation Information" (Employment Security Manual, Part V, section 6010 et seq.).

§ 625.10 Appeal and review.

(a) *States of the United States.* (1) Any determination or redetermination made pursuant to § 625.9, by a State agency other than the State agency of the Virgin Islands, the Canal Zone, the Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands, may be appealed by the applicant in accordance with the applicable State law to the first-stage administrative appellate authority in the same manner and to the same extent as a determination or redetermination of a right to regular compensation may be appealed under the applicable State law.

(2) Notice of the decision on appeal, and the reasons therefor, shall be given to the individual by delivering the notice to the individual personally or by mailing it to the individual's last known address, whichever is most expeditious. The notice of decision shall contain information as to the individual's right to review of the decision by the appropriate Regional Administrator, Employment and Training Administration, and the manner of obtaining such review, including the address of the Regional Administrator. Notice of the decision on appeal shall be given also to the State agency and to the appropriate Regional Administrator.

(b) *Virgin Islands.* (1) In the case of an appeal by an individual from a determination or redetermination by the State agency of the Virgin Islands, the individual shall be entitled to a hearing and decision in accordance with the procedures set forth in §§ 609.34-609.45 of this Chapter by a referee appointed by the Secretary.

(2) Notice of the referee's decision, and the reasons therefor, shall be given to the individual by delivering the notice to the individual personally or by mailing it to the individual's last known address, whichever is most expeditious. The notice of decision shall contain information as to the individual's right to review of the decision by the Regional Administrator, Employment and Training Administration, for Region II (New York), and the manner of obtaining such review, including the address of the Regional Administrator. Notice of the decision on appeal shall be given also to the State agency and to the Regional Administrator.

(c) *Canal Zone, Guam, American Samoa, and Trust Territory.* (1) In the case of an appeal by an individual from a determination or redetermination by the State agency of the Canal Zone, the Territory of Guam, American Samoa, or the Trust Territory of the Pacific Islands, the individual shall be entitled to a hearing and decision in accordance with the procedures set forth in §§ 609.34-609.45 of this Chapter by a referee appointed by the Secretary.

(2) Notice of the referee's decision, and the reasons therefor, shall be given

to the individual by delivering the notice to the individual personally or by mailing it to the individual's last known address, whichever is most expeditious. The notice of decision shall contain information as to the individual's right to review of the decision by the Regional Administrator, Employment and Training Administration, for Region IX (San Francisco), and the manner of obtaining such review, including the address of the Regional Administrator. Notice of the decision on appeal shall be given also to the State agency and to the Regional Administrator.

(d) *Review by Regional Administrator.* (1) The appropriate Regional Administrator, Employment and Training Administration, upon request for review by an applicant or a State agency shall, or upon the Regional Administrator's own motion may, review a decision on appeal issued pursuant to paragraph (a), (b), or (c) of this section.

(2) Any request for review by an applicant or a State Agency shall be filed, and any review on the Regional Administrator's own motion shall be undertaken, with 15 days after notice of the decision on appeal was delivered or mailed to the individual.

(3) A request for review by an individual may be filed with the appropriate State agency, which shall forward the request to the appropriate Regional Administrator, Employment and Training Administration, or may be filed directly with the appropriate Regional Administrator. A request for review by a State agency shall be filed with the appropriate Regional Administrator, and a copy shall be served on the individual by delivery to the individual personally or by mail to the individual's last known address. When a Regional Administrator undertakes a review of a decision on the Regional Administrator's own motion, notice thereof shall be served promptly on the individual and the State agency. Whenever review by a Regional Administrator is undertaken, the State's appellate authority shall promptly forward to the Regional Administrator its entire record of the case. Where service on a party is required by this paragraph, adequate proof of service shall be furnished for the record to the Regional Administrator and be a condition of undertaking review pursuant to this paragraph.

(4) The decision of the Regional Administrator on review shall be rendered promptly, and not later than 15 days after receipt of the record from the State's appellate authority.

(5) Notice of the Regional Administrator's decision shall be mailed promptly to the last known address of the individual, to the State agency of the applicable State, and to the Administrator, Unemployment Insurance Service. The decision of the Regional Administrator shall be the final decision under the Act and this Part, unless there is further review before the Assistant Secretary as provided in paragraph (e) of this section.

(e) *Further review by Assistant Secretary.* (1) The Assistant Secretary for

Employment and Training on his own motion may review any decision by a Regional Administrator issued pursuant to paragraph (d) of this section.

(2) Notice of a motion for review by the Assistant Secretary shall be given to the applicant, the State agency of the applicable State, the appropriate Regional Administrator, and the Administrator, Unemployment Insurance Service.

(3) When the Regional Administrator and the State agency are notified of the Assistant Secretary's motion to review, they shall forward all records in the case to the Assistant Secretary.

(4) Review by the Assistant Secretary shall be solely on the records in the case, any other written contentions or evidence requested by the Assistant Secretary, and any further evidence or arguments offered by the individual the State agency, the Regional Administrator, or the Administrator, Unemployment Insurance Service which are mailed to the Assistant Secretary within 15 days after mailing the notice of motion for review.

(5) Upon review of a case under this paragraph, the Assistant Secretary may affirm, modify, or reverse the decision of the Regional Administrator, and may remand the case for further proceedings and decision in accordance with the Assistant Secretary's decision.

(6) The decision of the Assistant Secretary shall be made promptly, and notice thereof, shall be sent to the applicant, the State agency, the Regional Administrator, and the Administrator, Unemployment Insurance Service.

(7) The decision of the Assistant Secretary shall be final and conclusive, and binding on all interested parties, and shall be a precedent applicable throughout the States.

(f) *Procedural requirements.* (1) Decisions on appeals from determinations or redeterminations by the State agencies shall accord with the Secretary's "Standard for Appeals Promptness-Unemployment Compensation" in Part 650 of this Chapter.

(2) The provisions on right of appeal and opportunity for hearing and review with respect to applications for DUA shall be consistent with this Part and with sections 303(a)(1) and 303(a)(3) of the Social Security Act, 42 U.S.C. 503(a)(1) and 503(a)(3).

(3) Any petition or other matter required to be filed within a time limit under this section shall be deemed to be filed at the time it is delivered to an appropriate office or at the time of the postmark if it is mailed by the United States Postal Service to an appropriate office.

(4) If any limited time period specified in this section ends on a Saturday, Sunday, or a legal holiday in the major disaster area, the time limit shall be extended to the next business day.

§ 625.11 Provisions of State law applicable.

The terms and conditions of the State law of the applicable State for an individual, which apply to claims for, and the payment of, regular compensation shall apply to application for, and the

payment of, DUA to each such individual, only as specifically set forth in the provisions of this Part.

§ 625.12 The applicable State for an individual.

(a) *Applicable State.* The applicable State for an individual shall be that State in which the individual's unemployment is the result of a major disaster.

(b) *Limitation.* DUA is payable to an individual only by an applicable State as determined pursuant to paragraph (a) of this section:

(1) Only pursuant to an Agreement entered into pursuant to the Act and this Part, and with respect to weeks in which the Agreement is in effect; and

(2) Only with respect to weeks of unemployment that begin during a Disaster Assistance Period.

§ 625.13 Restrictions on entitlement; disqualification.

(a) *Income reductions.* The amount of DUA payable to an individual for a week of unemployment, as computed pursuant to § 625.6, shall be reduced by the amount of any of the following that an individual has received for the week or would receive for the week if the individual filed a claim or application therefor and took all procedural steps necessary under the appropriate law, contract, or policy to receive such payment:

(1) Compensation as defined in § 625.2(d), except Special Unemployment Assistance;

(2) Any benefit or insurance proceed from any source for loss of wages due to illness or disability;

(3) A supplemental unemployment benefit pursuant to a collective bargaining agreement;

(4) Private income protection insurance;

(5) Any workers' compensation by virtue of the death of the head of the household as the result of the major disaster in the major disaster area, prorated by weeks, if the individual has become the head of the household and is seeking suitable work because the head of the household died as the result of the major disaster in the major disaster area; and

(6) The prorated amount of a retirement pension or annuity under a public or private retirement plan or system, prorated, where necessary, by weeks, but only if, and to the extent that, such amount would be deducted from unemployment compensation payable under the applicable State law.

(7) The prorated amount of primary benefits under Title II of the Social Security Act, but only to the extent that such benefits would be deducted from regular compensation if payable to the individual under the State law of the applicable State for the individual.

(b) *Disqualification.* (1) An individual shall not be entitled to DUA for any week after the week in which the individual is reemployed in a suitable position.

(2) An individual who refuses without good cause to accept a bona fide offer of

reemployment in a position suitable to the individual, or to investigate or accept a referral to a position which is suitable to and available to the individual, shall not be entitled to DUA with respect to the week in which such refusal occurs or in any subsequent week in the Disaster Assistance Period. For the purposes of this paragraph, a position shall not be deemed to be suitable for an individual if the circumstances present any unusual risk to the health, safety, or morals of the individual, if it is impracticable for the individual to accept the position, or if acceptance for the position would, as to the individual, be inconsistent with any labor standard in section 3340(a)(5) of the Federal Unemployment Tax Act, 26 U.S.C. 3304(a)(5), or the comparable provisions of the State law of the applicable State for the individual.

§ 625.14 Overpayments; disqualification for fraud.

(a) *Finding and repayment.* If the State agency of the applicable State finds that an individual has received a payment of DUA to which the individual was not entitled under the Act and this Part, whether or not the payment was due to the individual's fault or misrepresentation, the individual shall be liable to repay to the applicable State the total sum of the payment to which the individual was not entitled, and the State agency shall take all reasonable measures authorized under any State law or Federal law to recover for the account of the United States the total sum of the payment to which the individual was not entitled.

(b) *Recovery by offset.* (1) The State agency shall recover, insofar as is possible, the amount of any overpayment which is not repaid by the individual, by deductions from any DUA payable to the individual under the Act and this Part, or from any compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency, subject to the limitation in § 619.13(a)(3)(ii) of this Chapter in regard to recovery from any Special Unemployment Assistance payable to the individual.

(2) A State agency shall also recover, insofar as is possible, the amount of any overpayment of DUA made to the individual by another State, by deductions from any DUA payable by the State agency to the individual under the Act and this Part, or from any compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency, subject to the limitations in § 619.13(a)(3)(ii) of this Chapter in regard to recovery from any Special Unemployment Assistance payable to the individual.

(c) *Debts due the United States.* DUA payable to an individual shall be applied by the State agency for the recovery by offset of any debt due to the United States from the individual, but shall not be applied or used by the State agency in any manner for the payment of any debt of the individual to any State or any other entity or person.

(d) *Recovered overpayments.* Overpayments recovered in any manner shall be credited or returned, as the case may be, to the appropriate account of the United States.

(e) *Application of State law.* Any provision of State law authorizing waiver of recovery of overpayments of compensation shall not be applicable to DUA.

(f) *Final decision.* Recovery of any overpayment of DUA shall not be enforced by the State agency until the determination establishing the overpayment has become final, or if appeal is taken from the determination, until the decision after opportunity for a fair hearing has become final.

(g) *Procedural requirements.* (1) The provisions of paragraphs (c), (d), and (f) of § 625.9 shall apply to determinations and redeterminations made pursuant to this section.

(2) The provisions of § 625.10 shall apply to determinations and redeterminations made pursuant to this section.

(h) *Fraud detection and prevention.* Provisions in the procedures of each State with respect to detection and prevention of fraudulent overpayments of DUA shall be, as a minimum, commensurate with the procedures adopted by the State with respect to regular compensation and consistent with the Secretary's "Standard for Fraud and Overpayment Detection" (*Employment Security Manual*, Part V, sections 7510 et seq.).

(i) *Disqualification for fraud.* Any individual who, with respect to a major disaster, makes or causes another to make a false statement or misrepresentation of a material fact, knowing it to be false, or knowingly fails or causes another to fail to disclose a material fact, in order to obtain for the individual or any other person a payment of DUA to which the individual or any other person is not entitled, shall be disqualified as follows:

(1) If the false statement, misrepresentation, or nondisclosure pertains to an initial application for DUA—

(i) The individual making the false statement, misrepresentation, or nondisclosure shall be disqualified from the receipt of any DUA with respect to that major disaster; and

(ii) If the false statement, misrepresentation, or nondisclosure was made on behalf of another individual, and was known to such other individual to be a false statement, misrepresentation, or nondisclosure, such other individual shall be disqualified from the receipt of any DUA with respect to that major disaster; and

(2) If the false statement, misrepresentation, or non-disclosure pertains to a week for which application for a payment of DUA is made—

(i) The individual making the false statement, misrepresentation, or nondisclosure shall be disqualified from the receipt of DUA for that week and the first two compensable weeks in the Disaster Assistance Period that immediately follow that week, with respect to which the individual is otherwise entitled to a payment of DUA; and

(ii) If the false statement, misrepresentation, or nondisclosure was made on behalf of another individual, and was known to such other individual to be a false statement, misrepresentation, or nondisclosure such other individual shall be disqualified from the receipt of DUA for that week and the first two compensable weeks in the Disaster Assistance Period that immediately follow that week, with respect to which the individual is otherwise entitled to a payment of DUA.

§ 625.15 Inviolate rights to DUA.

(a) *Waiver of rights void.* Any agreement by an individual purporting to waive, release, or commute any right of the individual to DUA shall be void.

(b) *Assignment of rights void.* Any purported assignment, pledge, or encumbrance of any right of an individual to DUA shall be void.

(c) *Legal process prohibited.* Except as provided in § 625.14 or by applicable statute of the United States or regulation of the United States Department of Labor, any rights of an individual to DUA shall be exempt from levy, execution, attachment, garnishment, order for the payment of attorney fees, or any other remedy whatsoever provided for the collection of debt, and such remedies shall be precluded absolutely. This prohibition shall apply to sums payable to an individual and to sums paid to the individual.

(d) *Discrimination prohibited.* No person shall discriminate against any individual in regard to hiring or tenure of work or any term or condition of employment on account of seeking, applying for, or receiving any right to DUA.

(e) *Obstruction prohibited.* No person shall in any manner obstruct or impede, or attempt to obstruct or impede, any individual in seeking, applying for, or receiving any right to DUA.

§ 625.16 Recordkeeping; disclosure of information.

(a) *Recordkeeping.* Each State agency will make and maintain records pertaining to the administration of the Act as the Secretary requires, and will make all such records available for inspection, examination, and audit by such Federal officials or employees as the Secretary may designate or as may be required by law.

(b) *Disclosure of information.* Information in records made and maintained by a State agency in administering the

Act shall be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to regular compensation and the entitlement of individuals thereto may be disclosed under the applicable State law, and consistently with section 303(a)(1) of the Social Security Act, 42 U.S.C. 503 (a)(1). This provision on the confidentiality of information obtained in the administration of the Act shall not apply, however, to the United States Department of Labor, or in the case of information, reports and studies requested pursuant to § 625.19, or where the result would be inconsistent with the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or regulations of the United States Department of Labor promulgated thereunder.

§ 625.17 Announcement of the beginning of a disaster assistance period.

Whenever a major disaster is declared in a State, the State agency shall promptly announce throughout the major disaster area by all appropriate news media that individuals who are unemployed as the result of the major disaster may be entitled to DUA; that they should file initial applications for DUA as soon as possible, but not later than the 30th day after the announcement date; the beginning date of the Disaster Assistance Period; and where individual may obtain further information and file applications for DUA.

§ 625.18 Public access to agreements.

The State agency of a State will make available to any individual or organization a true copy of the Agreement with that State for inspection and copying. Copies of an Agreement may be furnished on request to any individual or organization upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the State agency.

§ 625.19 Information, reports and studies.

(a) *Routine responses.* State agencies shall furnish to the Secretary such information and reports and make such studies as the Secretary decides are necessary or appropriate for carrying out the purposes of the Act and this Part.

(b) *Final Report.* In addition to such other reports as may be required by the Secretary, within 60 days after all payments of disaster unemployment assistance as the result of a major disaster in the State have been made the State agency shall submit a final report to the Secretary. A final report shall contain a narrative summary, a chronological list of significant events, pertinent statistics about the disaster unemployment assistance provided to disaster victims, brief statements of major problems encountered, discussion of lessons learned, and suggestions for improvement of the program during future major disasters.

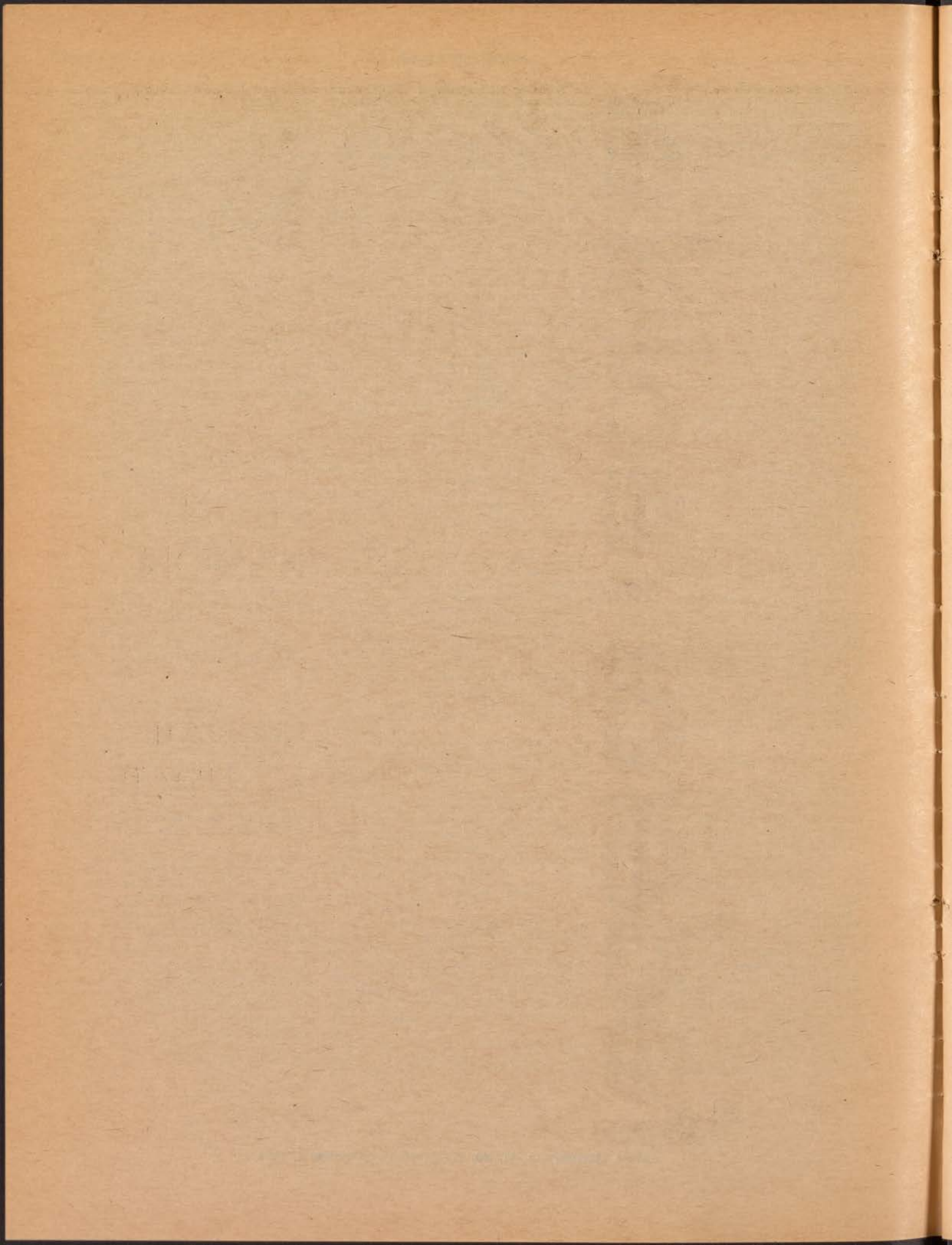
§ 625.20 Savings clause.

The regulations in this part do not apply to applications, determinations, hearings, or other administrative or judicial proceedings under section 240 of

the Disaster Relief Act of 1970, Public Law 91-606, 84 Stat. 1744, with respect to major disasters declared prior to April 1, 1974, and such applications, determinations, hearings, or other administrative or judicial proceedings shall

remain subject to section 240 of the Disaster Relief Act of 1970 and the regulations in this Part issued thereunder which were in effect on March 31, 1974.

[FR Doc.76-32907 Filed 11-8-76;8:45 am]



federal register

TUESDAY, NOVEMBER 9, 1976



PART IV:

FEDERAL ELECTION COMMISSION



MULTICANDIDATE COMMITTEES UPDATE TO INDEX

**Advisory Opinion Requests
1976—98—99**

TUESDAY, NOVEMBER 9, 1978



PART IV:

FEDERAL ELECTION COMMISSION

MULTICANDIDATE
COMMITTEES UPDATE
TO INDEX

Advisory Opinion Requests
1978-99-99

FEDERAL ELECTION COMMISSION

[Notice 1976-60]

MULTICANDIDATE COMMITTEES INDEX

Update

The Federal Election Commission today publishes an "update" to the Index of "Multicandidate Political Committees" published on October 6, 1976. A "Multicandidate Political Committee" is defined by 2 U.S.C. 441(a)(6), of the Federal Election Campaign Act of 1971, as amended, to mean a political committee:

* * * Registered under section 433 for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

The Commission is publishing this Index as prescribed by 2 U.S.C. 438(a)(6), requiring periodic publication in the Fed-

ERAL REGISTER of an Index of Multicandidate Committees, including the date of registration of such committees and the committees' dates of qualification under 2 U.S.C. 441a(a)(4).

Any person who believes that a committee not included on this update, or on the Index published on October 6th, has, in fact, met the qualifications for multicandidate status should so advise the Commission in writing and provide documentation as appropriate, so that the Commission can correct or update its records.

PARA PERSONA DE HABLA ESPANOL

Si usted tiene dificultades en entender el indice, escriba a Federal Election Commission, 1325 K Street, NW, Washington, DC 20463.

Dated: November 3, 1976.

THOMAS E. HARRIS,

Vice Chairman,

Federal Election Commission.

Committee	Registration date	Qualification date
American Federation of Teachers Committee on Political Education	Apr. 17, 1972	Jan. 1, 1975
Civic Action Fund, Atlantic Richfield Co.	Oct. 23, 1975	June 4, 1976
DSCC Federal Candidates Fund	Sept. 16, 1975	May 1, 1976
Kalamazoo Democrats 1976	Mar. 4, 1976	Sept. 4, 1976
Lincoln Club of Orange County	Apr. 10, 1972	Jan. 1, 1975
Mapco, Inc., P.A.C.	Jan. 29, 1976	Sept. 23, 1976
Merit Shop Action Committee	Sept. 14, 1972	Jan. 1, 1975
Nassau County Republican Federal Campaign Committee	Aug. 30, 1974	Aug. 20, 1976
National Conservative Political Action Committee	Apr. 3, 1975	Oct. 29, 1975
National Steel Political Action Fund	Jan. 20, 1976	Sept. 7, 1976
Public Service P.A.C.	Mar. 17, 1976	Sept. 17, 1976
United Technologies Political Action Committee	Feb. 11, 1976	Aug. 11, 1976
514 Committee	May 13, 1974	Jan. 1, 1975

[FR Doc.76-32832 Filed 11-8-76;8:45 am]

[Notice 1976-61, AOR 1976-98 and AOR 1976-99]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. 437f(c) and the procedures reflected in Part 112 of the Commission's Notice of Proposed Rule-making, published on May 26, 1976 (41 FR 21590), advisory opinion requests 1976-98 and 1976-99 have been made public at the Commission. Copies of AOR 1976-98 were made available on October 28, 1976, and copies of AOR 1976-99 were made available on October 29, 1976. These copies of advisory opinion requests were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street, N.W., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be con-

sidered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A descriptive listing of each of the requests recently made public as well as the identification of the requesting party follows hereafter:

AOR 1976-98: Whether the acceptance by Members of Congress of air carrier pilot training courses paid for by the Airline Transport Association would constitute a corporate contribution—Requested by Congressman Barry Goldwater, Jr., and Congressman Dale Milford, U.S. House of Representatives.

AOR 1976-99: Whether the full amount of funds collected from a concert sponsored by the Committee for Birch Bayh in 1976 to retire presidential campaign debts is matchable with Federal funds; whether tickets purchased with cash would be matchable—Requested by Robert March, Comptroller, Committee for Birch Bayh in 1976, Washington, D.C.

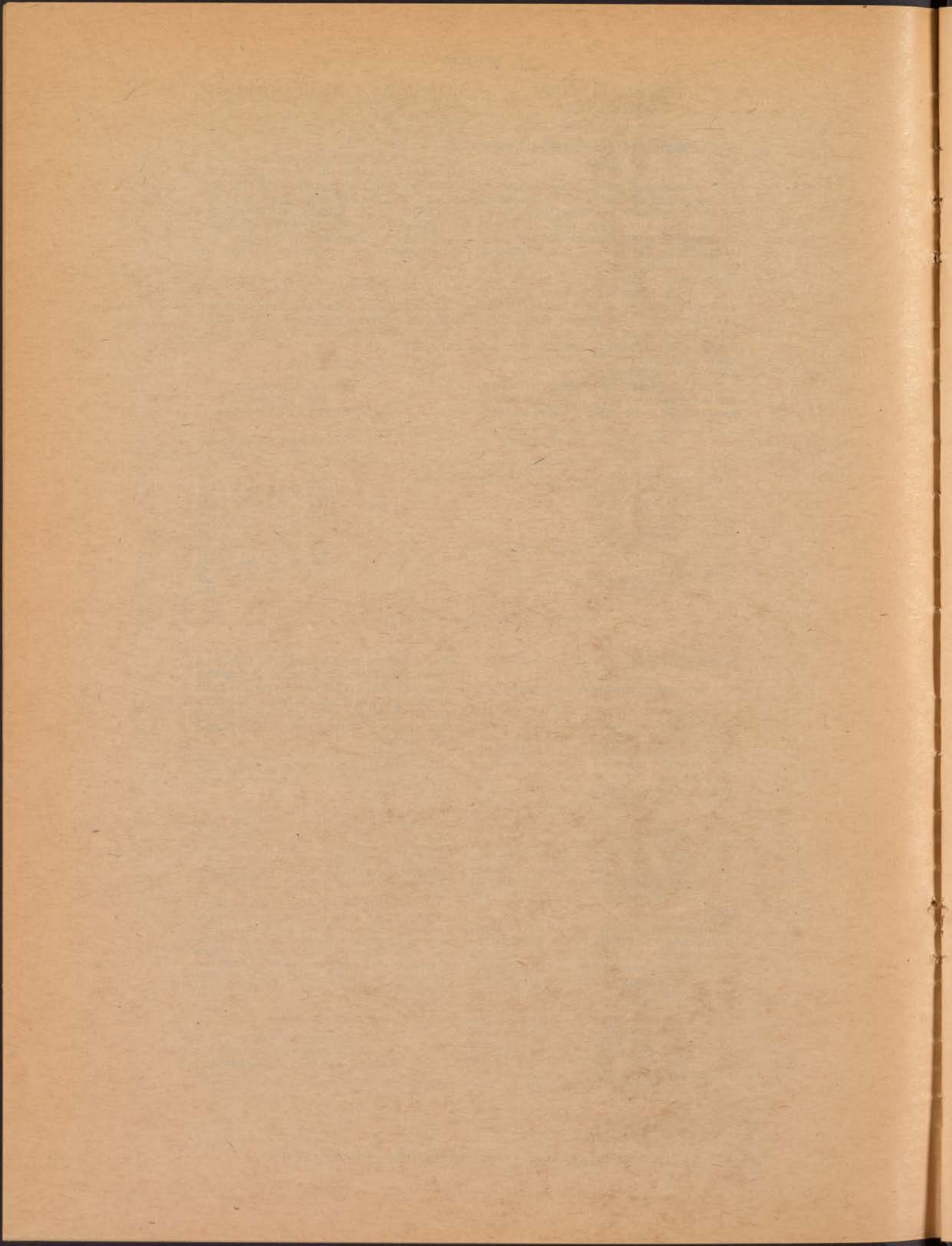
Dated: November 2, 1976.

THOMAS E. HARRIS,

Vice Chairman for the

Federal Election Commission.

[FR Doc.76-32833 Filed 11-8-76;8:45 am]



federal register

TUESDAY, NOVEMBER 9, 1976



PART V:

NATIONAL ADVISORY COUNCIL ON ECONOMIC OPPORTUNITY

■

PRIVACY ACT OF 1974

Systems of Records

NATIONAL ADVISORY COUNCIL ON ECONOMIC OPPORTUNITY PRIVACY ACT OF 1974 Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, Public Law 93-579, 5 U.S.C. 552a, the National Advisory Council on Economic Opportunity (hereafter known as the Council) hereby publishes for comment those systems of records subject to the Privacy Act of 1974 which are maintained by the Council. Any person interested in commenting on the routine use portions of the system notices may do so by submitting comments in writing to the Staff Director, National Advisory Council on Economic Opportunity, 1725 K Street NW., Washington, D.C. 20006 on or before December 9, 1976. These systems will become effective December 9, 1976 unless the Council publishes notice to the contrary. The Council's procedures for access to records in the systems are proposed as CFR Part 405. (The proposed rules are being published in this issue under the Proposed Rules Section).

Dated at Washington, D.C. on October 28, 1976.

Walter B. Quetsch,
Staff Director.

NACEO-76-1

System name: Payroll Records—National Advisory Council on Economic Opportunity.

System location: General Services Administration, Region 3; copies held by the National Advisory Council on Economic Opportunity. (GSA holds records for the National Advisory Council on Economic Opportunity under contract.)

Categories of records in the system: Varied payroll records, including, among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees; health benefits records; requests for deductions; tax forms, W-2 forms, overtime requests; leave data; retirement records. Records are used by the Council and GSA employees to maintain adequate payroll information for the National Advisory Council on Economic Opportunity employees, and otherwise by the Council and GSA employees who have a need for the record in the performance of their duties.

Authority for maintenance of the system: 31 U.S.C., generally. Also, 42 U.S.C. 2945.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: See Appendix. Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, also is disclosed to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with the withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Staff Director, National Advisory Council on Economic Opportunity, 1725 K Street NW., Washington, D.C. 20006. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Staff Director.

In the absence of a withholding agreement, the Social Security Number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with Section 7 of the Privacy Act, Public Law 93-579.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper and microfilm.

Retrievability: Social Security Number.

Safeguards: Stored in guarded building; released only to authorized personnel.

Retention and disposal: Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

System manager(s) and address: Staff Director, National Advisory Council on Economic Opportunity, 1725 K Street NW., Washington, D.C. 20006.

Notification procedure: Refer to the National Advisory Council on Economic Opportunity access regulations contained in 4 CFR Part 405.

Record access procedures: Refer to the National Advisory Council on Economic Opportunity access regulations contained in 4 CFR Part 405.

Contesting record procedures: Refer to the National Advisory Council on Economic Opportunity access regulations contained in 4 CFR Part 405.

Record source categories: The subject individual, the National Advisory Council on Economic Opportunity.

NACEO-76-2

System name: General Financial Records—National Advisory Council on Economic Opportunity.

System location: General Services Administration, Central Office; copies held by the National Advisory Council on Economic Opportunity. (GSA holds records for the National Advisory Council on Economic Opportunity under contract.)

Categories of individuals covered by the system: Employees of the National Advisory Council on Economic Opportunity and members of its Board of Trustees.

Categories of records in the system: SF 1038, Application and account for advance of funds; Vendor register and vendor payment tape. Information is used by accounting technicians to maintain adequate financial information and by other officers and employees of GSA and the National Advisory Council on Economic Opportunity who have a need for the record in the performance of their duties.

Authority for maintenance of the system: 31 U.S.C., generally; also, 42 U.S.C. 2945.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: See appendix. Records also are released to GAO for audits; to the IRS for investigation; and to private attorneys, pursuant to power of attorney.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper and tape.

Retrievability: Manual and automated by name.

Safeguards: Stored in guarded building; released only to authorized personnel.

Retention and disposal: Disposal of records shall be in accordance with the HB GSA Records Maintenance and Disposition.

System manager(s) and address: Staff Director, National Advisory Council on Economic Opportunity, 1725 K Street, NW, Washington, D.C. 20006.

Notification procedure: Refer to National Advisory Council on Economic Opportunity access regulations contained in 4 CFR Part 405.

Record access procedures: Refer to National Advisory Council on Economic Opportunity access regulations contained in 4 CFR Part 405.

Contesting record procedures: Refer to National Advisory Council on Economic Opportunity access regulations contained in 4 CFR Part 405.

Record source categories: The subject individual; the National Advisory Council on Economic Opportunity.

APPENDIX—NATIONAL ADVISORY COUNCIL ON ECONOMIC OPPORTUNITY

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged

with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly

authorized official engaged in investigation or settlement or a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with the agency's responsibility for evaluation and oversight of federal personnel management.

A record from this system of records may be disclosed to officers and employees of a federal agency for purposes of audit.

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

A record from this system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

A record from this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

[FR Doc.76-32561 Filed 11-2-76; 1:43 pm]

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